REPORT OF THE CIVIL JUSTICE COMMITTEE

1924-1925

Appendix No. 2—ORAL EVIDENCE

(In Three Volumes)

VOLUME II

(The Punjab and Delhi, Burma, Bihar and Orissa, and the Central Provinces and Berar.)

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CALCUTTA: GOVERNMENT OF INDIA
CENTRAL PUBLICATION BRANCH
1925

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CALCUTTA: GOVERNMENT OF INDIA
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The record given herein of the oral evidence does not always reproduce the exact words used but is to be regarded only as a rough note taken by the Committee's reporters for the purposes of the Committee. The notes have not been revised by the witnesses.

THE PUNJAB AND DELHI.

Evidence recorded at Lahore.

PRESENT:

The Hon'ble Mr. Justice G. C. Rankin, Bar.-at-Law, Chairman.

The Hon'ble Mr. Justice L. Stuart, C.I.E., I.C.S.

Dr. F. X. DeSouza, I.C.S., Bar.-at-Law.

Sir T. Deshika Achariyar, Kt.

Col. B. O. Roe, District and Sessions Judge, Jullundar.
Mr. J. Coldstream, I.C.S., formerly District Judge, Delhi.
Bakshi Tek Chand, M.A., LL.B., Advocate, High Court, Lahore.
Co-opted Members.

Mr. C. V. Krishnaswami Ayyar—Secretary.

List of witnesses examined at Lahore.

Monday, 7th April 1924.

*1. Mr. Rangi Lal, M.A.	District Judge, Lahore.
2. Bhai Harnam Singh	Sub-Judge, Amritsar.

Tuesday, 8th April 1924.

3. Sh. Ali Mohamad	Sub-Judge, Gujranwala.
4. Sh. Feroze Din	Sub-Judge, Wazirabad.
*5. Sh. Ali Bakhsh	Merchant, Amritsar.

Wednesday, 9th April 1924.

6. Mr. E. Mukerjee	Junior Sub-Judge, Amritsar.
*7. Mr. W. deMalan, I.C.S.	District and Sessions Judge, Amritsar.

Thursday, 10th April 1924.

*8. Rai Bahadur Ganga Ram, M.A.	District and Sessions Judge, Gujranwala.
9. Mr. Ganpat Rai, Bar.-at-Law	Representative, Desi Beopar Mandal, Lahore.

Friday, 11th April 1924.

*10. The Hon'ble Mr. Justice A. B. Broadway.	Judge, High Court, Lahore.
*11. The Hon'ble Mr. Justice Moti Sagar.	Judge, High Court, Lahore.

---

*Written statements and oral evidence printed.

Saturday, 12th April 1924.

12. Mr. H. Calvert	Registrar, Co-operative Credit Societies, Lahore.

Monday, 14th April 1924.

13. Rai Bahadur Badri Das	Vakil, High Court, Lahore.
*14. Rai Bahadur Raj Narain	Bar.-at-Law, Delhi.
15. Mr. Ram Kishore	Vakil, Delhi.

Tuesday, 15th April 1924.

*16. The Hon'ble Mr. Justice Abdul Raoof.	Judge, High Court, Lahore.
17. L. Durga Das	Vakil, High Court, Lahore.
18. L. Duni Chand	Vakil, High Court, Ambala

Wednesday, 16th April 1924.

19. S. Khark Singh	Vakil, High Court, Lahore.
20. L. Jagan Nath Agarwal	Vakil, High Court, Lahore.
21. Rai Bahadur Dhanpat Rai	Chairman, Board of Directors, Punjab National Bank of India, Ltd.
22. L. Bulaqi Shah	Money-lender, Lahore.

Thursday, 17th April 1924.

*23. Diwan Som Nath	Additional District Judge, Sialkot.
24. Mr. Barkat Ali	Vakil, High Court, Lahore.
25. Dr. Nand Lal	Bar.-at-Law, Lahore.

Tuesday, 22nd April 1924.

26. L. Hans Raj Bhandari	Representative, Bar Association, Rawalpindi.
27. Mr. Hari Lal	Representative, Bar Association, Multan.
28. L. Piara Lal	Vakil, High Court, Delhi.

Wednesday, 23rd April 1924.

29. L. Rala Ram	Pleader, Tarn Taran.
*30. L. Jaswant Rai	Senior Sub-Judge, Lyallpur.

Mr. RANGI LAL, District Judge, Lahore.

Written Statement.

1. A (*ii*) District judges do not ordinarily try original suits in this province. They only try cases under the Indian Divorce Act, copyright cases.

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*Written statements and oral evidence printed.

Sub-judges should not ordinarily take more than 6 months to decide title suits and more than 4 months to decide money suits.

Small cause suits should not take more than 2 months.

Regular appeals should not take more than 4 months and miscellaneous appeals not more than 2 months.

(*iii*) There are no munsifs in this province now. We have sub-judges, 4th grade, corresponding to munsifs in other provinces.

Title, 4 months.
Money, 3 months.
Rent, 2 months.
Others, 2 months.
Small causes, 2 months.

These results cannot be achieved without a considerable strengthening of the staff and making it more efficient.

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B. (*i*) Objections in execution proceedings are of two classes:—

(1) by judgment-debtors,
(2) by third persons.

Objections by judgment-debtors should not take more than a month to decide. Objections by 3rd persons are disposed of summarily. They too should not take more than a month.

2. Yes. The main causes are these:—

(1) Incompetence, slackness and weakness of presiding officers.
(2) They have much more work than they can efficiently deal with.
(3) Corruption of the clerical and process-serving establishments.
(4) Ignorance and dilatory habits of litigants.
(5) Lack of any system for preparation of a case before it is put into court.
(6) The Bar does not help in speeding up justice. All kinds of devices are adopted to cause delay when this is in the interests of the clients.

3. (*a*) The most important thing is to have competent Judges. They should not have more work than they can cope with.

(*b*) There should be attorneys, who should prepare cases before they are brought into the courts. No pleader should be allowed to practise unless he has been an attorney for, say, 2 years.

A plaintiff's attorney should get into correspondence with the defendant and try to ascertain what the real dispute is.

4. Yes. All munsifs should be law graduates. Those who come out highest in the LL.B. examination should be taken as far as possible. No member of the Indian Civil Service should be appointed as district judge unless he has worked for ten years at least as sub-judge.

5. A munsif should on appointment be placed under a competent sub-judge. He should sit with the sub-judge for a month and learn work. He should then be given power to try simple suits not exceeding Rs. 100 in value. After 3 months the powers should be raised to Rs. 500. These should be raised to Rs. 1,000 after 10 months from appointment. There should be a probationary period of one year for every munsif. He should not be confirmed unless his work is well reported on.

6. Not very much.

7. It would be easy to fix a standard after old world methods are discarded and the men who belong to the old school are weeded out. It should be the duty of the district judge to see that the required standard is attained by all his subordinates.

8. No. It is sometimes necessary to accommodate pleaders but this does not lead to any great delay. Pleaders ask for adjournments only when they know that the judge will be only too glad to get rid of the case for the day.

9. I am of opinion that all small cause suits up to Rs. 500 in value should be tried under small cause powers. In the larger towns all small cause suits up to Rs. 2,000 in value should be tried by specially constituted small cause courts. There is no other change required.

10. We have no munsifs. We have:—

	Power. Rs.	
Sub-Judge, 4th Class	1,000	in all classes of cases.
Sub-Judge, 3rd Class	2,000	
Sub-Judge, 2nd Class	5,000	
Sub-Judge, 1st Class	Unlimited	

11. In this province munsifs and sub-judges belong to one cadre. Any one can be invested with any powers if he is fit for them.

12. Yes, he can be relieved of land acquisition cases, probate and succession certificate proceedings, insolvency proceedings, proceedings under the Guardian and Wards Act.

13. I would invest only senior sub-judges with these powers. I do not see why this should not be acceptable to the public.

14. I have no experience of panchayats. I doubt, if we can find suitable men on whom exclusive jurisdiction could be conferred.

15. I would not restrict the scope of Schedule II of the Provincial Small Cause Court Act. This may be possible when the personnel of the judicial service improves.

16. (*a*) Yes. No special limitations are necessary.

17. No. Sub-registrars in this province are generally retired military officers with practically no education.

18. The right to appeal could perhaps be curtailed if the subordinate judiciary were improved. At present it can hardly be curtailed.

24. I can suggest no changes off hand. My complaint is that the procedure laid down is not followed. I am collecting materials to show how cases are prolonged. I will place this material before the Committee when I appear as a witness.

25. The application of the procedure under section 106, Transfer of Property Act, to civil suits would not be desirable in all cases. If a defendant cannot be personally served, service on a member of the family should be considered effective service. If no member of the family can be found, service should be effected by proclamation or by notice in a newspaper.

26. The forms of plaints given in the Civil Procedure Code are generally adhered to.

27. Yes.

28. Village officials are not very reliable. The post office can certainly be used much more extensively than it is used now but it cannot altogether take the place of the process-serving agency.

29. Yes.

30. I approve of this suggestion. Directions to this effect have recently been issued by our High Court. There should be no rigid rule.

31. If cases are prepared by attorneys and all the documents are filed at the earliest stage and the parties examined there would be no difficulty in framing correct issues.

32. Yes. General incompetence. Every one has got into slack ways.

33. This would necessitate an extra hearing. The examination before the framing of issues can be detailed.

34. Yes. I think that work should be so arranged that a witness should, as a rule, be examined on the day for which he has been called.

35. Yes. This will stop if the courts take an interest in the case from the beginning. At present most sub-jurges record evidence mechanically, not knowing what the case really is. They try to understand the case when it is argued after all the evidence is over.

36. I agree. The court should have the power to call for evidence if it is not satisfied by the affidavit.

37. This is hardly practicable.

38. No.

40. This will work hardship.

41. I approve of the suggestion. Service on the minor should be discretionary and not mandatory.

42. Sometimes it is, when the court is not vigilant. No hard and fast rules can be laid down. Appellate Courts should watch.

43. No.

44. Yes.

45. As a rule they are not. It should be the duty of district judges to see that the judges themselves fix dates. There should be only one diary kept and it should be in the hands of the judge. At present the vernacular diary is filled in by the reader. It is only a few judges who keep their own diaries in English.

46. Yes. They should be consulted if they are not consulted.

47. They are delayed only when witnesses are in another province or at a distance of more than 200 miles from the court.

48. A trial when it begins should proceed from day to day till it is finished. An adjournment should be given only for special reasons.

49. No. There is an impression prevailing that it is the duty of the court to see that all the witnesses appear on the date fixed. I am of opinion that the parties should be responsible for producing their witnesses. They can take out summonses if they like. The court should take special steps to procure the attendance of a witness only in special cases.

The courts when fixing these cases do not know how many witnesses will turn up. They fix a number of cases for a day and have to adjourn them all. This is most unsatisfactory.

50. The district judges are much too overworked to find time for inspection of lower courts.

51. There are not many commercial suits in this province.

52. It should not be necessary to refer things to the Collector when it is proposed to sell or farm out agricultural land. This causes great delay.

Notice under Order XXI, Rule 66, after attachment causes delay. It could issue when the order for attachment issues.

Regular suits should not be allowed after a third person's objections to attachment are disallowed. The objection should be decided by the executing court, after a proper trial. Objections made before the Insolvency Court are now decided by that court almost as regular suits. If regular suits are filed in other courts execution proceedings have to hang fire for considerable periods.

There should be time limit within which objections are to be filed. Say, 15 days.

53. The question does not often arise.

54. I agree.

55. I agree.

56. I would not curtail the period to 6 years. A decree-holder need not apply every 3 years or one year.

57. I have no opinion to offer.

58. I do not agree. In this country a good deal of business used to be done on credit before our law courts came into existence.

60. Yes. The court should have this discretion.

61. Notice should be given before attachment is ordered if more than a year has elapsed.

62. No change is necessary.

63. A special notice at each stage is not necessary.

64. This is not necessary. Lists of attachment and sale proclamation can issue at the same time. There should be an interval of, say, 15 days between attachment and sale.

At present vakils are not engaged in many execution cases. If we serve notices on vakils we will be making it compulsory for decree-holders to engage vakils for execution cases.

65. No.

67. No change in the rules is necessary. They should be worked with care.

68. Yes.

69. There is great delay in realisation of assets by receivers. There are no permanent receivers except in 2 or 3 districts. Every district should have a permanent receiver. It is unsatisfactory to have to find a receiver for each case. Insolvency work should be transferred to the senior sub-judge in all districts.

70. No change of rules seems necessary.

72. Yes.

73. There is no objection. Some time is spent in obtaining certified copies.

74. I have no suggestions to make.

75. Institution of attorneys who should try and settle undisputed claims out of court and prepare cases before they are brought into the court.

76. No.

77. No such provision should be made.

78. No.

79. I do not agree.

80. I do not agree.

81. No such rule is necessary.

82. There should be no further enhancement.

85. No.

86. Yes. Only authorised law reports should be cited in courts.

87. Codification is attended with great difficulties. Want of codification does not lead to much delay.

Mr. RANGI LAL, District Judge, Lahore, called and examined on Monday, the 7th April 1924.

Chairman.—*Q.* I understand that in this province judicial officers are classified into four grades?

A. Yes. There are four grades of subordinate judges, 1st grade, 2nd grade, 3rd grade and 4th grade.

Q. I understand that it is quite a recent arrangement?

A. Yes.

Q. Am I right in thinking that the fourth grade of subordinate judges corresponds to what used to be called munsifs?

A. Yes.

Q. First of all as regards ordinary jurisdiction of these officers, does each grade exercise powers up to the same limit?

A. No. 4th grade exercises powers up to Rs. 1,000, 3rd grade up to Rs. 2,000, 2nd grade up to Rs. 5,000 and 1st grade officers exercise unlimited powers.

Q. And what about the district judge?

A. The district judge in this province very rarely tries original suits.

Q. I take it that the district judge hears all appeals from the decisions of 1st grade subordinate judges?

A. Yes. As a matter of fact all appeals up to Rs. 5,000 in money suits and above Rs. 1,000 in all other classes of suits. There are very few appeals which are heard by the senior subordinate judge.

Q. And what appeals are they?

A. They are up to Rs. 500 in small cause suits and Rs. 100 in other classes of suits.

Q. And beyond that limit all appeals are heard by the district judge himself?

A. Yes.

Q. As regards the court offices at headquarter stations where you will have, of course, two or three judicial officers or even more, I understand the nazarat system is the central nazarat system? I mean to ask whether each officer has his own nazir and a set of peons or is there only one nazir for all the officers?

A. There is only one nazir for all the courts.

Q. And I understand you may have in big stations a naib nazir and then an assistant naib nazir?

A. Yes.

Q. And under them there are process-servers?

A. Yes.

Q. Have you any other officers?

A. We have a few bailiffs.

Q. Is there any difference between a bailiff and an ordinary process-server?

A. The bailiff is supposed to sell property in execution of decrees and attach property. We have not enough bailiffs and sometimes we have to give this work to process-servers.

Q. Do you know how much pay the ordinary process-server gets in the Punjab?

A. Rs. 17.

Q. And how much the bailiff gets?

A. I think it is Rs. 20. I would not be very sure. A little more than the ordinary process-server. I think their grade is Rs. 30—50. I would not be far wrong.

Q. In stations which are not headquarter stations, I take it that you sometimes have outlying judgeships?

A. Yes.

Q. And there are sometimes more than one court of that nature?

A. Yes.

Q. Have you great many of these outlying judgeships?

A. Quite a number.

Q. And in these cases of course the staff is under the immediate jurisdiction of that officer?

A. Yes.

Q. Is there any system at headquarters by which one of the subordinate judges is put in charge, let us say, of the nazarat? Is he usually a senior sub-judge?

A. Yes.

Q. Is there any other administrative work that is given to one of the *judges?*

A. I do not think so.

Q. Do you mean to say that it is only the district judge who is supposed to do the necessary supervision as regards everything else?

A. The senior subordinate judge has powers for the distribution of work among the various subordinate judges. He receives all the plaints and distributes them among the various subordinate judges.

Q. At headquarter stations where you have perhaps four or five judges in addition to the district judge, of course, is the work divided among them according to the value of suits or the nature of suits?

A. All the officers of the same class working at headquarters receive their work from the senior sub-judge without any regard being paid to territorial jurisdiction.

Q. So that the senior sub-judge has the choice to equalise the files of officers working under him. I suppose in order to equalise files he may transfer cases from one court to another court?

A. He has no power of transfer. These powers are only exercised by the district judge. Whenever the senior sub-judge wants some distribution of work he reports to the district judge who sanctions the arrangement.

Q. Have you in your experience much trouble as regards process-servers in this province?

A. There has been some trouble, but my experience is that if the officer is competent and takes care of his work, he will feel no trouble at all. Those who are slack in their work simply say " process not served and further notice to issue."

Q. Take the case where a subordinate judge, let us say, of the fourth grade notices that a particular process-server has not been doing his duty. Has he to report to somebody or can he fine or punish the man himself?

A. He has got to report to the senior sub-judge who is in charge of the process-serving establishment.

Q. Is there any difficulty in reporting? Do they like to report?

A. They have not got sufficient time to go into these matters carefully. They report only when they can make out a proper case, because the orders of the senior sub-judge are appealable to the district judge and when there are not sufficient grounds to support the action taken, they are sometimes let off by the district judge.

Q. Do you think that the time and labour involved in making a report in writing, prevent the subordinate judge from doing so?

A. Yes, because it always necessitates an enquiry.

Q. Have you any system by which you can know that a particular peon served so many processes in the course of a week or a month?

A. Yes.

Q. Do you also keep record of the number of ineffective services?

A. Yes. It all depends upon the senior sub-judge who is in charge of the establishment. I always used to give black marks whenever I found that a particular peon was not doing his work properly.

Q. Supposing a process-server shows a low percentage of services effected by him, do you think that the senior sub-judge or the district judge cannot very well dismiss him?

A. I do not know whether such drastic action is taken or not, but in suitable cases very severe action is taken.

Q. Have you any suggestions to make as regards the way in which the rules relating to service of processes can be widened or improved? For instance there is a suggestion that service may also be effected by registered post as an additional check?

A. Sir, my experience has been that when a man comes to know that the registered cover contains a process of the court, he does not accept it and sends it back. I know from my own personal experience that acknowledgments of registered covers sent never come back and they are often not accepted by the people on whom they are served.

Q. But in many cases I suppose they do come back received and in many more come back refused. Of course in a case of that sort when the thing comes back refused, the man must be deemed to have been served?

A. According to certain rules laid down, this is not the proper service. And then how do you know that the man himself refused it, except the report made by the post man.

Q. Still if the letter has gone to the man's correct address?

A. In some cases you find simply ' refused.' In other cases ' not traced,' ' not found,' etc.

Q. In cases where they were delivered and refused, that would be a valuable piece of evidence where the man is trying to delay service.

A. Very hard and fast rules can hardly be laid down.

Q. I am only suggesting that an attempt might be made of using the post office as an additional check.

A. That is, the very first time when a summons is to issue through a process-server, another summons might go through the post.

Q. Not another summons, but only a notice.

A. Then no harm is done.

Q. Do you think any good could be done?

A. Yes. If it comes back with the endorsement 'refused' it should be taken as good service. But I am doubtful however.

Q. When a process-serving peon is given a summons in the Punjab what does he do? Does he march out with the summons by himself and endeavour to find the particular defendant? What is his practice?

A. He has got about 20 or 30 processes which he has got to serve within a particular area. He takes them all out and goes from village to village. If the plaintiff or defendant chooses to go with him well and good, and he of course makes his terms with the plaintiff or defendant. When they are not there, he probably takes no particular action. It all depends as to how honest he is and how active he is.

Q. Take the ordinary case. In fact do peons expect that somebody will accompany them on behalf of the plaintiff or others?

A. They do.

Q. If you do not supply an identifier of that sort, the peon may do anything he likes?

A. Yes.

Q. What is the usual proof accepted in the Punjab of service? Is it simply the return of the peon that so and so was pointed out to him by somebody or is it that an affidavit by the identifier is required?

A. An affidavit by the peon is required.

Q. Is there any reason why an honest peon should find himself in difficulty in finding out the defendant?

A. There should not be much difficulty.

Q. In the same way, supposing a process is sent to you from Calcutta to a court in the Punjab, to be served. In that class of cases is there greater delay than in serving ordinary processes?

A. Yes, because the plaintiff is not there to point out the man. Then the process-server can be coerced by the defendant.

Q. As regards the delay, is it a question of the peon or of the nazir?

A. It is the question of the peon.

Q. In this province, I understand, there are revenue officers in each village?

A. We have a patwari for two or three villages.

Q. If there is a question of finding out a particular person, does the peon ever go to the patwari for identification?

A. I do not think so.

Q. To whom is he supposed to go?

A. He is supposed to go to the lambardar.

Q. Has each village a lambardar?

A. Yes.

Q. So there is no reason why a man should accompany a peon from headquarters merely to get the defendant identified?

A. No. There is no difficulty about it.

Q. Do lambardars send the peons away without identifying the man?

A. Yes. In a good many cases.

Q. In those cases, don't you think if you pay a lambardar something extra for his trouble, he would be more honest?

A. No. That would be much too small for him to become honest all of a sudden. It would make no difference whatever.

Q. Would he not be very glad to do this sort of work, if he is paid for his time and trouble?

A. No.

Q. In many of these cases, would it not be possible to send process by post to the nearest spot so that the peon need not start off from the headquarter station and travel all the distance?

A. There is no trouble about it. We have one tahsil.

Take for instance Lahore. We have three tahsils in the district. We have subordinate judges at Chunian, Kasur and Lahore. Each of these subordinate judges has a process-serving establishment of his own. All the processes for the tahsil are sent to the subordinate judge and he serves the processes.

Q. The process is sent to the nearest court in order that the process may be served from there. If there is another place still nearer to the place where the process is to be served, would it not be better to send the process to that place by post and have it served?

A. There is no officer who can be trusted with the supervision of the peon. The tahsil area is not very large. In Lahore we have 30 process-servers. We divide the tahsil into 10 or 12 divisions and allot processes in rotation to each particular area. One process-server is handed over from 30 to 40 processes and he has to go to the half-a-dozen villages and serve them all and come to headquarters.

Q. He ought to know in course of time a good many of the people?

A. We do not have the same process-servers. We change them, because otherwise they would be more easily tampered with.

Q. As regards the actual conduct of suits in the Punjab I understand that the language of the court is Urdu, but of course a good deal of evidence is taken in Punjabi, and then a sort of translation into Urdu is made by the reader who endeavours to take the whole thing down, and the judge very often takes down in English.

A. Yes.

Q. As far as the judge is concerned, it is entirely discretionary?

A. But in this province full evidence is recorded in English by the judges themselves.

Q. When the case goes on appeal, is it found in some cases that for practical purposes the judge's English notes are sufficient?

A. I think so.

Q. If there is any doubt about the matter, no doubt the vernacular records will have greater authority.

A. I doubt that very much. At present, I understand that the English record, as it is in the hands of the judge himself, is supposed to be more reliable in spite of the fact that it is not intended to be so full a note. But, it is, as a matter of fact, quite a full record.

Q. If that is so, don't you think that this system of double record has very little to be said for? Because both are full notes. Both of them are translations; the one is by the reader doing the thing quite mechanically and the other is by the judge himself.

A. Yes.

Q. Don't you think that it would be a good practice in the case, at all events, of those judicial officers whose command of English is fair to abolish the vernacular record altogether?

A. Yes.

Q. When a plaint is presented, I suppose it is very common for people to present it at the last minute of the eleventh hour with plainly insufficient court fees and then ask for time to deposit the balance.

A. Not very often. In sometimes does happen.

Q. Do you think that the powers under the Code are insufficient to deal with that sort of thing?

A. I don't think sò. The ordinary powers are quite sufficient.

Q. I think it is quite open to you to say that they should pay the amount of the balance within 2 or 3 days and supposing that is not paid within that period, you could reject the plaint?

A. Yes. The Code allows it.

Q. As regards the plaint itself, have you any complaint as regards the bad drafting of pleadings?

A. Yes. They are very badly drafted, because litigants come at the last minute from their villages straight into the cutchery. They get hold of a petition writer who drafts the plaints and puts them into court. Later on he does not even know what the plaint contains, what are the necessary documents and the counsel knows nothing about it. It has to be very often returned for amendment. Proper documents are not on the file. It leads to a good deal of unnecessary delay.

Q. Don't you think that something might be done to stop this drafting of plaints by the petition writers?

A. My suggestion is that a graduate straightaway from the college should not be allowed to practise in courts. He should be given an opportunity of preparing work for the counsel, who should appear in court. That would enable him to draft a proper plaint when he comes as a pleader.

Q. Before we come to that, is there anything that you could suggest to be done to abolish these plaints being drafted by intensely stupid and utterly ignorant petition writers?

A. It may work a limited hardship in some few cases but on the whole it will be salutary.

Q. To do what?

A. To do away with petition writers drafting the plaints. We have too much of petty litigation which should never come into courts at all. These people come and pay Rs. 2 to the petition writer and have a plaint drafted and put in. They probably compromise the cases later on without engaging a counsel. If we insist upon their engaging a counsel, we won't have too much of this petty litigation.

Q. I take it that in the case of a person who chooses to put a small value for a title suit of some complication, everything goes wrong because of the ignorant petition writer.

A. Yes. Very often.

Q. Does he sometimes also bear the character of a pleader's clerk? Do you find that the person to whom the litigant goes is sometimes one of the several clerks of pleaders?

A. Not exactly a clerk. But he is a tout.

Q. Do you find sometimes that when a plaint is drafted by a petition writer, there is filed with it a vakalatnamah for a pleader at the same time?

A. Yes. There is a pleader engaged.

Q. Does it sometimes happen that the pleader merely has the thing shown to him and he has not drafted the plaint?

A. Very often.

Q. In that class of cases you could make the pleader responsible for the drafting of the plaint?

A. The pleader sometimes signs the plaint and sometimes does not sign the plaint. If he has drafted the plaint himself, he signs it.

Q. When the plaint is presented, I take it that a date is given by the munsarim for the return of the process when the summons is issued.

A. Yes.

Q. Nothing very much turns on that day?

A. No.

Q. By that date does the defendant as a rule file the written statement or does he ask for time to file the written statement?

A. Sometimes he files and sometimes he asks for time.

Q. Do the sub-judges in this province or some of them exhibit undue laxity in granting renewed applications for time?

A. Yes. (Some notes made by the witness of particular instances handed to Chairman).

Q. What is the head of the subordinate judge's office; I mean what is your chief ministerial officer called?

A. Only one senior subordinate judge has got an office. Other subordinate judges have got readers.

Q. Is it the reader who sits by him?

A. Yes.

Q. You have not got an office at all?

A. No, only one subordinate judge in the district has an office which has one clerk. He is a sort of co-ordinating officer.

Q. In your district you have got a unified office, serving all the courts, under the control of the senior subordinate judge.

A. Yes.

Q. In Bengal each judicial officer has a little office of his own and a man called sheristadar to whom plaints, execution applications and all things of that kind go. You have not got that?

A. No.

Q. Here you have got one office and I take it that all plaints are presented in that one office and you have a plaint clerk and one or two special execution 'muharrirs.'

A. All execution cases go to the various courts.

Q. Who receives the applications? Take an ordinary case where a fourth class subordinate judge has made a decree.

A. Evidence is taken on commission when witnesses are of other provinces and are living beyond 200 miles.

Q. And what about pardahnashin ladies?

A. Pardahnashin ladies are generally examined by some officer of the court or summoned locally. That does not take time.

Q. I think in your note you have given answers to a number of questions of our questionnaire and we are very much obliged to you for that. I am sorry I have not had much time to go through your answers and suggestions, but is there any point on which you would like to lay emphasis?

A. The first point is that the judiciary in this province is very incompetent and the second point is that it has got too much work.

Q. Do you think that the files of all the courts are very heavy? Do you know the statement of their files?

A. I know all the courts in this province. I know very roughly that each subordinate judge of the fourth class has an average of 500 cases, of the second class about three to four hundred and of the first class about two to three hundred.

Mr. Justice Stuart.—*Q.* You mean pending?

A. Yes, I consider that the file is so much heavy that it cannot be properly dealt with by a single officer.

Chairman.—*Q.* I take that all these pending cases would practically be contested cases?

A. Not all.

Q. I take it that cases pending before subordinate judges of the fourth class are not very complicated and difficult cones. They are petty cases?

A. Not in a place like Lahore, but in outlying places the subordinate judge of the fourth class has a good deal of petty work.

Q. Would you mind telling the Committee what in fact is the position with regard to small cause court powers? Does every subordinate judge exercise small cause court powers or are these given according to the personal needs of the court?

A. Some selected subordinate judges of the fourth class have small cause court powers up to Rs. 50 and very few have powers up to the value of Rs. 100.

Q. And what about subordinate judges of the third class?

A. No small cause court powers are exercised by subordinate judges of the third grade.

Q. And what about judges of the second grade?

A. They do not exercise any powers, I mean small cause court powers.

Q. Then what is your suggestion about it?

A. My suggestion is that cases up to the value of Rs. 500 should be done on the small cause court side. There is no reason why subordinate judges of the third grade should not exercise small cause court powers. Cases between Rs. 100 and Rs. 500 should be tried by senior subordinate judges.

Q. I understand that subordinate judges of the third grade are quite competent to try title suits which are complicated up to the value of Rs. 2,000, Is it not?

A. Yes.

Q. Well if he is competent to try complicated title suits up to the value of Rs. 2,000, is he not competent to try small cause cases up to the value of Rs. 500?

A. Yes, if he is actually competent to try complicated cases he is certainly competent to try small cause cases.

Q. In fact the question of competency is decided before he is appointed and not afterwards.

A. Yes. There are only four places where small cause courts are established, and these are Delhi, Ambala, Lahore and Simla.

Q. Would you like any further provision to be made for commercial cases and cases relating to bills of exchange?

A. There are not very many commercial cases in this province.

Q. I understand that in Amritsar they have got a good deal of commercial litigation?

A. Yes there are some cases.

Q. Am I right in thinking that there were some cases in 1920 and 1921 owing to slump in piece goods?

A. Yes.

Q. If a person has accepted a bill of exchange and does not pay, do you not think that a case, if instituted, should be tried more quickly than a pre-emption suit or a title suit?

A. It would be satisfactory to have this case tried more quickly.

Q. Would you like to introduce Order 37 procedure at places like Amritsar or elsewhere where commercial litigation is a bit heavy?

A. I am afraid I am not in a position to give a definite reply.

Q. Would you like the idea that in places like Amritsar where there is lot of commercial litigation, those men should only be posted who have got special training in these matters?

A. Yes.

Q. Would you be in favour of it?

A. I would certainly be in favour of it.

Another thing I wish to say is this. In this province, suits of very large value are tried by subordinate judges who are very often incompetent and sometimes corrupt.

Q. Why do you say that? Is that simply an impression or was there any action taken because of corruption? Had High Court any occasion to dismiss anybody on that ground?

A. Yes. There have been dismissals and prosecutions. In this province all suits, however big, are tried by subordinate judges, while in the Presidency towns all cases above Rs. 2,000 in value are tried on the Original Side in the High Court.

Mr. Justice Stuart.—*Q*. What is your method in the Punjab of indicating to the District Judge and the High Court the delay in each particular court? Is there any system by which statements of delay are sent to the High Court?

A. Yes.

Q. What are the statements? Could you show me the place in the High Court Rules indicating how they are prepared, and how they are sent out and what they contain?

A. We send a report giving details of the six oldest cases.

Q. You only give the numbers but you don't send out statements of detail.

A. It is never done.

Q. How can it be possible to check whether the delay is due to the judge's fault or is due to causes beyond his control, unless some explanation is given, the mere fact that so many cases are pending conveys nothing?

A. If you look at the record, it will speak for itself.

Q. Supposing there are 300 cases pending for a year. Do you mean to say that the district judge would send for the records of these 300 cases and examine each record?

A. Well, the district judge is supposed to inspect the subordinate judges' courts occasionally.

A. The execution petitioner will go to that subordinate judge.

Q. You mean he will go to the court and present it to the judicial officer.

A. He will put it in a box which is opened at a particular hour and then the man will have to be called and dates given.

Q. That box is opened at a particular hour and then the man is shouted for and the judicial officer passes his order.

A. Yes.

Q. That is every order however mechanical it may be in execution is actually made by the judicial officer.

A. Yes.

Q. Does the clerk write the order or does the judicial officer write it himself?

A. Now the High Court is insisting on all orders in execution cases to be recorded by the judicial officer himself in his own hand.

Q. Where does he write the order?

A. On the back of the petition.

Q. What is the order?

A. The order is 'office to report,' and the office has to report as to when the decree was passed.

Q. You write it on the back of the petition. Where do you write the subsequent orders?

A. On a separate sheet.

Q. Hav'nt you got any definite order sheet for execution showing its history from beginning to end?

A. The subsequent order is supposed to be followed on the petition and another sheet is used if necessary.

Q. Is the subsequent order recorded on the back of the petition or is it recorded on a separate proper order sheet?

A. The subsequent order will be recorded on the back of the petition and when there is no room left a separate sheet is used.

Q. What really is the case is that order sheet is tacked on and that after the first order all the orders will follow?

A. Yes.

Q. Do you not think it would be an improvement if there were an execution muharrir as part of the office under the subordinate judge and if these things were presented there and the execution clerk was to draft the proposed orders or to bring the matter up to the judge and get these formal orders passed?

A. I do not see how it will improve matters.

Q. The first order is "office to report." Cannot that be done without keeping the petitioner waiting till the box is cleared?

A. Office has to report from the register.

Q. But cannot that be done without keeping the man waiting? Do you not think that judicial officer's time might be saved if he is to write 'approved' on the draft order put up the execution clerk?

A. I would not trust any subordinate officer to pass any formal order.

Q. But you would not mind if he were to make suggestions?

A. That is generally done by the reader. When these petitions are taken out the reader looks at them and he gives them over to the man who is called 'ahalmad' and he has got to write his remarks on that.

Q. That is the reader who sits in front of the judge.

A. Yes.

Q. And he sends it to somebody else to report.

A. Yes.

Q. Does he put it up to the judge for his signature?

A. Yes.

Q. So what is done by the execution muharrir is really a part of the reader's work.

A. Yes.

Q. As regards the written statements do you find that they are worse or better than the plaints?

A. Much the same.

Q. Do you find that people make any use of the order relating to discovery or interrogatories?

A. It is not understood at all in this province.

Q. How are issues settled in this province? Are they handed in by the pleader or does the judge take some trouble about it?

A. They are framed by the judge but in a most perfunctory manner. They do not examine the parties or witnesses and they do not require all the documents to be filed before framing the issues.

Q. Are cases opened in the Punjab? Does the plaintiff himself get up and put his hands in his pocket and tell the judge in a sensible way whether the suit is for damage for killing a man or such and such a thing?

A. No, it is not done at all.

Q. Does the judge begin by recording the evidence?

A. Yes, very often he does not know anything about the case.

Q. He does not know even the pleadings.

A. No.

Q. If it is a complicated case he simply goes on writing and he is not in a position to decide questions of irrelevancy.

Q. He tries to do what he can but he thinks it best to record even what is unnecessary rather than to decide relevancy or irrelevancy.

Q. Are people given to prolix cross-examination?

A. When the judge is not vigilant the counsel goes on.

Q. Why should he go on?

A. To please his client.

Q. And he does not even know the pleadings?

A. Because the case would probably have been filed about a year ago and he has forgotten all about it. If the case is a complicated one, he simply goes on writing and writing.

Q. And if a question of relevancy of evidence arises, what does he do?

A. He tries to do what he can.

Q. Have you got a system by which pleaders are paid daily in this province?

A. Sometimes. Only in big cases they are paid daily fees.

Q. I take it that difficulty does not arise very much in big cases?

A. No, even big cases are very badly handled in this province.

Q. Do you think that this practice of daily fees is in any way responsible for undue cross-examination?

A. No, I do not think so. When a big counsel takes daily fees he is probably worth the fee.

Q. Do you find as a rule that a man, who takes three days for the work which ought to have been done in an hour, is a person who has got no other work for those three days?

A. Yes.

Q. What is your opinion with regard to evidence taken by commissioners?

Q. But don't you think that it would be better to have a statement of delay which really is a history of the case? There are strong objections to sending for the records, because sending for the records means holding up the case.

A. It is for the district judge to call for the list.

Q. That would be throwing the onus on the District Judge? In other provinces there are High Court rules on the subject.

As to inspections I know that inspection is considered quite seriously in Punjab. But as a matter of fact, are the courts inspected every year?

A. The district judge has no time to make any inspection at all.

Q. How often has your court been inspected by the district judge?

A. Never in my life.

Q. How many years' service have you put in?

A. I have put in 18 years' service.

Q. You have what is known as a fard-i-ahkam. Could you kindly show us the rules of the High Court under which that fard-i-ahkam is prepared?

A. That is only an index.

Q. Is there no order sheet in the Punjab?

A. No.

Q. An order sheet is in most provinces something of this kind. As soon as a suit is instituted, the order sheet is opened up. Plaint presented within time, court fee sufficient, plaintiff to deposit process fees by such and such a date. On such and such a date process fees received, process to issue on such and such a date, and then when the case continues it goes on showing a complete history of the case.

A. There is no such thing here. The orders are spread on the record. This fard-i-ahkam is filled up at the end.

Q. Out of the whole judicial staff in the Punjab 36 officers have got legal qualifications and 139 have not. I mean by legal qualifications an LL.B. degree. I have also included barristers among the 36. I want to know what was your system of training before an Extra Assistant Commissioner in the past was promoted to hear civil suits. How was he trained before he received those suits?

A. The system has changed a little now. I will tell you what happened to myself. I passed a competitive examination and was put on for settlement training for a period of 9 months and then I was given 3rd class powers as munsif and 3rd class powers as magistrate.

Q. Did the settlement training include civil law?

A. No.

Q. Were you trained well in revenue matters?

A. Yes.

Q. And you probably found in the office an old unannotated copy of the Civil Procedure Code and you had to carry along as best as you could with the plain text?

A. I had passed the departmental examinations by that time.

Q. Is there a paper in civil law—I mean in the Departmental Examination?

A. There are two papers in civil law and that included the whole of the Civil Law.

Q. I am told that quite recently a new rule has come in that in future sub-judges will only be employed if they have legal qualifications and Law degrees?

A. Yes.

Q. They are also expected to have had some practice as lawyers.

A. Not necessarily.

Q. How many years did you spend in each grade?

A. I am now officiating as a district judge. I was made a first grade sub-judge after putting in only 3 years' service.

Q. Have you anything of the nature of an efficiency bar?

A. Yes. We have.

Q. After how many years?

***A.* The efficiency bar comes in the Rs. 500 grade.**

Q. Do you know whether orders are passed on the report of the district judge or on examination of the man's work?

A. There are very few cases in which the efficiency bar is applied.

Q. Don't you think that there has been an absolutely enormous advance now-a-days in the commercial development of Punjab?

A. Yes. There has been some advance.

Q. Don't you find that everywhere even in small places factories are rising and commercial undertaking is going on making conditions very much more complex than they used to be before?

A. No.

Q. Have you not noticed in places like Ambala and Amritsar that there is an extraordinary rate of progress?

A. Yes. Amritsar is the distributing centre for the Punjab and has been so for a long time in fact.

Q. Don't you think that in this province the Government ought to be prepared to meet the conditions caused by any increased complexity that may arise. The nature of the litigation is getting much more complex and there are many commercial suits.

A. Yes.

Q. Do you not think it is advisable in these circumstances to do something in the way of training certain sub-judges especially to cope with the commercial litigation, to understand commercial usages and commercial habits, that is relating to contracts and so on, which are not very easy things to understand?

A. Yes.

Q. You are also strongly in favour of some sort of systematic training for all civil judges before they enter on their duties?

A. Yes.

***Q.* I find from the Civil List that one member of the I. C. S., Indra Mohan Lal, a gentleman of about a year and a half service is graded here as a sub-judge. Do you know any particulars?**

A. Before he was appointed to the I. C. S., he was a candidate for the appointment of a munsif.

Colonel Roe.—*Q.* You remember that, before we had district and sessions judges, we had divisional sessions judges?

A. Yes.

Q. Before the divisional judge was abolished, the district judge had small cause powers?

A. Not all district judges.

Q. I think there was not any district judge without small cause powers.

A. I never had any small cause powers before I came as a small cause court judge.

Q. Don't you think that a senior sub-judge who is responsible for the distribution of work could be given small cause powers and he could well take up and try these petty cases?

A. Yes. I think the powers of the small cause courts also might be increased to Rs. 2,000.

Q. Where are they?

A. Lahore, Amritsar, Simla and Delhi.

Sir T. Desikachariar.—*Q*. I see from the note on the Administration of Civil Justice in this province that a good number of your suits are suits for money and moveables.

A. Yes.

Q. I also see that 163,000 out of 187,000 cases are suits below Rs. 500.

A. Yes.

Q. They seem to be all very petty litigation. If that is the nature of the litigation, why do you say that the munsifs are not in a position to cope with the work?

A. They have got more work than they can cope with.

Q. Is the work too heavy?

A. The establishment is understaffed.

Q. I do not yet follow. What is the total number of subordinate judges you have?

A. These suits are all tried on the regular side. They are not tried on the small cause court side. If they are tried on the small cause court side that will save the time of the appellate court also.

Q. Suits are tried by subordinate judges on the small cause court side only up to rupees two hundred.

A. There are few subordinate judges who have powers only up to rupees one hundred. Many of them have no small cause court power.

Q. Having regard to the work of the subordinate judges do you think that their small cause court powers can be safely increased.

A. I think small cause court powers of first class subordinate judges should be increased but not of the lower class.

Q. In my province a munsif, directly he is appointed, is given small cause court powers up to rupees fifty and it goes up to rupees two hundred. Supposing such a thing is tried would it be feasible?

A. When men of old standard have retired it might be feasible.

Q. Provided a proper selection is made the existing number of munsifs can cope with the work.

A. I do not know. It will have to be seen after experience as to how much less time is taken when cases are tried by small cause court side.

Q. There are 187,000 cases of which 163,000 are below five hundred rupees. If half of these are tried by the small cause court side it will reduce the work of the judge as well as of the appellate court. That can be done by proper selection of officers and more efficient supervision of their work so that there is a possibility of increasing the small cause court jurisdiction.

A. Yes, all cases up to rupees five hundred should be tried by the small cause court side.

Q. I suppose subordinate judges have no territorial jurisdiction except the district jurisdiction. I suppose the High Court prescribes the jurisdiction and not the local government.

A. Yes.

Q. I wish to know whether the provisions of the Civil Court Act with reference to the appointment of honorary subordinate judges has been given effect to.

A. There are some honorary subordinate judges but they are very unsatisfactory.

Q. Why are they unsatisfactory?

A. They have practically no legal qualifications. They are appointed on consideration of rendering loyal services and not on consideration of legal qualifications.

Q. Taking into consideration the present mode of selection do you think that people will be available for serving as honorary subordinate judges if the selection is made properly?

A. Men who are really competent will not be available.

Q. And those only who want honours will be willing to take up such appointments?

A. Yes.

Q. I think having regard to the enormous amount of work done by the honorary subordinate judges they can be in a position to relieve the stipendiary subordinate judges of their work.

A. We have got some experience of honorary subordinate judges and that experience leads us to think that civil work cannot be entrusted to honorary subordinate judges.

Q. Well, I find in the report of 1922 that there are 73 honorary courts and they are responsible for the disposal of forty thousand cases and nothing is said so far as the quality of the work is concerned. I would like to know as to what exactly you think of the disposal of so many cases by these people.

A. They are petty cases.

Q. I put it to you whether there is any possibility of selecting suitable people to do this work.

A. I do not think so.

Q. Have you anything corresponding to honorary subordinate judges? You will agree with me in thinking that people will have to travel twenty to thirty miles, sometimes twice and sometimes thrice. What do you think of having village panchayats to dispose of such petty litigation?

A. We have no experience of panchayats and I am afraid we cannot confer exclusive jurisdiction on panchayats. We cannot get suitable men.

Q. There are books of law and theory that I have been reading. With regard to village panchayats I thought your province is cradle of village community.

A. There is hardly a man whom we can trust.

Q. Have you got anything corresponding to our Village Panchayats Act?

A. An Act has recently been passed but it has not been definitely brought into use yet.

Q. So it is not possible to say what that experiment is likely to prove.

A. A man like myself who has been for twenty years going from village to village and from district to district and who has come across all kinds of people should be in a position to say whether it would be reliable or not.

Q. Are you not somewhat pessimistic?

A. I am only stating the real facts.

Q. Is it not a real disaster that people should come for a petty suit from a distance of fifty miles?

A. The more facility you will provide the more litigation there will be.

Q. The net result of your view is that you do not think that village panchayats are going to be of any use.

A. Yes.

Dr. DeSouza.—*Q.* Who are the honorary munsifs? I see there are large number of men who have disposed of forty thousand suits. Are they village headmen?

A. Notables in the city and the outlying places who have rendered good service to Government on various occasions.

Q. What is the Act which confers these powers on them? Is there any special Act?

A. There is the Punjab Civil Court Act.

Q. I am asking you about recent years.

A. Recently there have been some members of the Indian Civil Service who had very little experience of judicial work done by subordinate judges.

Q. Is that a recent innovation or was that so formerly?

A. It was not so formerly because now there is some difficulty in getting Indian Civil Service men for the appointment of district judges. At present great difficulty is experienced in getting Indian Civil Service men for this post.

Q. Then what is your suggestion?

A. My suggestion is that Indian Civil Service people should make up their minds quickly and should work as subordinate judges for something like ten years before they become or are appointed as district judges.

Q. Do you think that at present Indian Civil Service officers appointed as district judges have got no judicial experience?

A. Indian Civil Service district judges are reluctant to work as subordinate judges because that is a junior appointment and pay is not very high.

Q. But now they have got a time scale? They will be getting the same pay?

A. There are two time scales, senior grade time scale and junior grade time scale. If an officer is holding a senior appointment he gets pay according to the senior grade time scale and if an officer is holding a junior appointment, he gets pay according to the junior grade time scale.

Q. For the sake of efficiency would you insist that Indian Civil Service people before they are appointed as district judges should work as subordinate judges for at least ten years?

A. Yes very strongly.

Q. Does he hear appeals from the judgments of Provincial Civil Service subordinate judges who have worked for more than ten years as subordinate judges?

A. Yes, even from the judgments of those who have worked for twenty years.

Q. There is another question which I like to ask you. Do you think that one of the causes of delay is due to the fact that officers are transferred frequently? What is your opinion with regard to that?

A. That cannot be avoided and is necessary. These transfers do not contribute very much towards delays in the disposal of cases. When an officer leaves a case the other officer coming in his place begins from that stage where his successor had left and at the utmost it involves one adjournment.

Q. You have been working as senior subordinate judge at Lahore for several years, what is your experience about the state of file here?

A. The senior subordinate judge has got more work than he can cope with.

Q. Do you think that there are more delays in the court of the senior sub-judge here than in any other court?

A. That all depends upon the officer who happens to be the senior sub-judge in Lahore. Cases heard in the senior sub-judge's court here are more complicated than the cases that are heard in other districts. A very competent officer is required for Lahore.

Q. What has been the actual state of the file for the previous four or five years?

A. There has been great congestion.

Q. What remedy would you suggest?

A. Appointment of a very competent officer.

Q. Do you think that it would improve matters if an additional district judge were appointed in Lahore?

A. I have suggested that in a place like Lahore there should be an additional district judge exercising original jurisdiction. Lahore is now like a presidency town and litigation is between very influential people and big people and so on. It is not fair that a sub-judge who sometimes may be corrupt should try cases of unlimited value.

Q. Are you in favour of having some civil suits decided by sub-registrars?

A. Sub-registrars are often retired military officers with no educational qualifications. They would hardly be suitable to do that class of work.

Q. I saw a proposal in a paper suggested by a witness in another province that they might introduce the system of a judge trying civil cases, with the assistance of jury with no right of appeal. Do you think that this province is ripe for this sort of arrangement?

A. No.

Q. So you are in favour of retaining the right of appeal?

A. Yes.

Q. Another point. What is your experience with regard to cases between minor parties?

A. I am of opinion that service on the minor is not necessary. That causes a good deal of delay. He should be served only when he has attained the age of sixteen years so that he may have an opportunity of saying something regarding the appointment of his guardian. At present minors who are not even a year old are served.

Q. Do you think that another cause of delay is due to the fact that records are sent for from the record branch?

A. Yes.

Q. Is it not a fact that at present there is only one record room, with civil, revenue and criminal records, which is under the Collector?

A. Yes.

Q. Do you think, if they are separated and placed under the district judge, it would not facilitate matters?

A. No.

Q. If it is placed under the senior judge or subordinate judge, don't you think the record-keepers would comply with the requisitions for records more quickly than it is done at present?

A. It would not be commensurate with the expense.

Q. With regard to district judges you said they were overworked. What is the remedy for this?

A. I think all land acquisition cases and guardianship cases, also probate cases might be made over to the senior subordinate judge.

Q. With regard to executions, is it not your experience that there is much delay? What remedies would you suggest with regard to this?

A. There is only one remedy I can suggest. That suits by third persons who object to attachment of property should not be allowed. At present a property is attached. A third person comes and objects and claims the property as his own. The suit is summarily dismissed by the court. Then a regular suit is brought up. That takes two or three years. All the time the execution is held up.

Q. Another reason why execution proceedings are delayed is that judges and subordinate judges take up execution work at the fag-end of the day and sometimes leave them to their readers. Do you think things will improve if directions are issued to subordinate judges to take up execution matters in the first part of the day?

A. Yes. It has been my practice to take execution work first.

Q. Is there any special day for it?

A. No special day.

Q. What is your experience with regard to other courts?

Q. The power is given to the High Court and not to the local government.

A. It was given to the local government but now it has been transferred to the High Court subject to the sanction of the local government.

Q. In this Act there seems to be a provision that the selection is to be made by the High Court itself.

A. I know ever since the Act came into force that the High Court has not appointed any munsif.

Q. If the appointments are made by the High Court do you not think the function of the honorary munsif will be found satisfactory?

A. If the High Court can find better men.

Q. The High Court will not be influenced to the same extent. Do you not think if appointments are made by the High Court the selection will be much better?

A. The question is that you have to decide what kind of men are considered suitable and then whether that kind of men are available.

Q. There will be retired government servants, retired deputy collectors and retired subordinate judges.

A. A man who has retired at the age of fifty-five years after doing judicial work has probably no zeal left in him.

Q. Have you seen that many after retirement pine for work and having nothing to do they fall upon reading the " Gita "?

A. We have not found men who are keen on doing that kind of work.

Q. Can you not find a leading landholder?

A. They have got no legal qualifications.

Q. But in petty money suits law is not much used.

A Will you give them small cause court powers?

Q. I leave the question of detail. I am only asking questions on principle.

A. There may be some who are useful but most of these big zamindars are apt to take sides.

Q. There is always a suspicion of their being biased.

A. Yes.

Q. There are certain number of suits tried by tahsildars.

A. They are relics of old time.

Q. Do tahsildars exercise civil jurisdiction?

A. Formerly they used to do but now I do not think that they exercise any civil jurisdiction.

Q. Do they exercise concurrent jurisdiction with the munsif?

A. Yes.

Q. How is the distribution made between the tahsildar and the munsif?

Bakshi Tek Chand.—Where there are no munsifs the tahsildar is empowered to take up civil cases.

Q. Is it the policy in this province, so far as possible, to concentrate the courts at one station or to decentralise them among the outlying stations?

A. We have outlying courts but a great majority of the courts is concentrated at the headquarters.

Q. Take a district like Amritsar or a district with a number of seven tahsils.

A. We have no district of more than five tahsils.

Q. Now in such a district how many outlying munsifis are there?

A. We have probably three.

Q. I think you told the Committee that there was a marked change in this province in the method of recruiting munsifs. You said that the old system had been changed and that the change was an adequate one.

A. Yes. Now I understand all the subordinate judges are law graduates.

Q. I think that is insisted upon?

A. Yes. One of our grievances is that men having no legal qualifications are grouped together with those who have high legal qualifications. People working in other offices are sometimes recruited in this branch of service and prove a failure. They might be doing good work in their own capacity but it is very rare that they prove an acquisition to the judicial department.

Bakhshi Tek Chand.—I understand you suggest a system of attorneys?

A. Yes.

Q. Will you kindly explain the system?

A. What I want is that there should be some system by which cases, before they are actually brought before court, may be prepared. At the present time litigants come from villages with money in their pockets and engage fresh law graduates to conduct their cases, who in fact know nothing of law and practice. I would suggest that law graduates should work as attorneys or solicitors and should prepare cases rather than plead in court.

Q. Do you insist on chamber work?

A. My point is that there should be an experienced pleader whose duty should be to appear before the court and plead the case, but there should also be a junior pleader who should prepare the case and correspond with the litigant.

Q. So you would divide the legal profession into two parts, (1) attorneys or solicitors and (2) advocates or barristers?

A. Yes.

Q. Would you have this system at every place, even in outlying munsifis?

A. Yes.

Q. Do you not think that this system suggested by you would be very expensive to the litigant public? According to your suggestion litigants shall first have to engage attorneys and then a counsel who would appear in court and plead their cases?

A. Well at present litigants have to go to their counsel for about a dozen times or even more, and if you add up all that I do not think that expenses will be much.

Q. Well supposing we have got competent judiciary and a sufficient number of judges, would you advocate this system even then?

A. Yes, because it is not fair that a fresh law graduate should conduct cases in court. He must have some experience and training.

Q. But if the litigant engages a senior and experienced counsel, would you still require the system of having attorneys?

A. In that case details will have to be worked out, but I should like to have something of that kind, because petty cases are got hold of by junior counsel who do not know anything of law and practice. In my opinion it would be much better if senior counsel appeared before court and junior ones prepared cases for them. Junior counsel should not be allowed to practise in court for two or three years. They should simply prepare cases for senior counsel.

Q. As regards district judges, they are recruited in this province in three different ways:—

(1) from the provincial service;

(2) from the Indian Civil Service and

(3) two posts are reserved for the bar.

Do you think those who are recruited from the Indian Civil Service have got sufficient judicial training before they are appointed as district judges?

A. In some cases they have not.

A. I know that a great many people do not pay any attention to the execution work themselves. They leave it to their readers, they write the orders and put it up for signature. That is not satisfactory.

Q. Your opinion is that directions should be issued to subordinate judges?

A. The High Court has issued orders that all execution proceedings should be in the hands of the judges.

Q. What about the sale of agricultural lands by the Collector?

A. I do not think the Collector should have anything to do in the matter. I do not understand why the case should be sent to the Collector at all. There is always a conflict going on between the Collector and the civil court. Under the law the civil court should have the final say in the matter.

Q. Your suggestion is that the procedure should be abolished?

A. Yes.

Q. Are you in favour of the present rule which requires that decree-holders should keep the decree alive by applying every three years?

A. They can apply at any time within 12 years.

Q. Would that reduce the work?

A. I think so.

Q. Are you also aware of the fact that one of the causes for delay is submission of returns of work by the munsifs and subordinate judges? Does it not tend to postponing lengthy and complicated cases? If they take lengthy cases, the requisite number cannot be made up.

A. I do not think so.

Shaikh ALI BAKSH, Merchant, Amritsar, called and examined on Tuesday, the 8th April 1924.

(*No Written Statement received.*)

Chairman.—Q. I think your firm carries on business in hide and skin at Amritsar.

A. Yes.

Q. You are yourself an Honorary Magistrate at Amritsar.

A. Yes.

Q. What I should like you to tell us is not so much on the point of procedure but the state of litigation in Amritsar at present?

(The witness began giving his evidence in vernacular.)

A. My complaint is that there is a great delay in the disposal of cases because there is a great difficulty in serving processes. Process-servers should be attached to each court separately. The present practice is that the process-servers do not go to the locality and they write down false reports while sitting in the nazir's room or in the nazir's office and there is a great delay in consequence. The sub-judge in each case, where the service is not made, should hold enquiry and take full explanation and then punish and fine them. I think it would be a good thing to have the pay of the process-servers increased but that alone would not be sufficient to stop their dishonesty. At present they can say: " my pay is very small, what can I do." But if their pay is increased they will not become honest. The increase in their pay has not in any way improved their work, on the contrary it has made them worse. Now they expect higher bribe than they got before. Of all the presiding officers of the court some are good and some are lazy. From what I have seen about half are good and half are not good. I think there ought to be a special judge in Amritsar who could understand commercial matters and also in Lahore and Delhi. It leads to unnecessary adjournments because the various presiding officers do not know commercial law. If we have got a separate judge to deal with commercial matters then everything would go well. The presiding officer leaves the execution work to the reader and other clerks. I instituted three or four cases myself. My cases are simply for money lent. When they are small cause court cases they are decided fairly quickly but when there are larger cases there is a considerable delay. In my opinion it will be a great advantage if the small cause court power were increased and I should like to see it increased to eight hundred or one thousand rupees. I pay seven hundred and three rupees as income tax. I deal in hides and I am alone. I have no partner.

(The constitution of the proposed appellate benches was explained to the witness.)

Mr. Justice Stuart.—*Q.* Do you think that the establishment of these benches would be an improvement on the present system?

A. I think it would be a very good idea and would give justice.

(Bakhshi Tek Chand again explained the point to the witness who adhered to his previous answer and added that he considered that appeals to the High Court were a source of great nuisance and involved a lot of money and waste of time.)

Mr. W. deMALAN, I.C.S., District and Sessions Judge, Amritsar.

Written Statement.

1. It is impossible to state in general terms the "period reasonably required" for the disposal of the various kinds of civil proceedings. One might as well be asked to say how long it should take an artist to paint a picture or a novelist to write a book. There are so many things to be taken into account in each case, *e.g.*, the nature of the case itself (simple or complicated), the idiosyncrasies of the parties and their witnesses and pleaders, and the state of the pending file of the court concerned. General statements and averages based on statistics in regard to the heterogeneous mass of work which comes before civil courts, are bound to be misleading.

2. It must be remembered that litigation is one of the main recreations of the people of this country, who have not as yet taken kindly to the ordinary recreations of civilised society. The average Indian litigant likes to have a good run for his money, and to prolong the excitement of a pending case as much as possible. Even if the plaintiff is anxious for a prompt decision, the defendant is naturally in favour of delay: while counsel on both sides are usually interested in keeping the case going, for the sake of their own pockets. The law's delays are, no doubt, a scandal in this country, but this scandal will not be removed until the attitude of the people generally towards litigation is radically changed by education and civilisation. Action from above is unlikely to have any practical effect until this change takes place below.

3. (Also 34 and 35).

Much of the delay which occurs in civil proceedings is due to the time wasted in summoning witnesses and recording oral evidence. A case may sometimes be kept hanging on for months, if not years, because parties insist on calling witnesses who, for some reason, are reluctant to appear, or cannot be found. As a rule, oral evidence is entirely worthless, and is not even mentioned in the Appellate Court. I would abolish altogether the system of summoning witnesses through court, and make the parties entirely responsible for producing their own evidence. The court could then dispose of the average cases in two hearings at most, after the framing of issues. The initial delay, which frequently takes place owing to the difficulty of serving the defendants with process, cannot be avoided except by improving the process-serving agency. Time is often wasted by pleaders asking for a date for arguments. Such adjournments should be granted only in complicated cases, where there is a large mass of documentary evidence to be studied. Ordinary cases should be argued immediately on the conclusion of evidence.

As a rule, both parties should be ordered to bring their evidence on the same date, and the case should go on until the evidence is finished, other cases being postponed, if necessary, to the following day. This would produce some confusion at first, till people get used to it, but would save time in the long run.

Subordinate courts in the Punjab have recently been informed by the Registrar of the Lahore High Court, in his letter No. 664-G., dated 30th January 1924, that " in other provinces a civil suit is disposed of very much as a Sessions case, *i.e.*, the witnesses on either side are called for on a fixed date and the case is heard from day to day and disposed of without the repeated adjournments which mar the progress of a civil suit in the Punjab." The Civil Justice Committee will doubtless be in a position to point out to the Punjab courts the reasons for this remarkable difference between the Punjab and the rest of British India, and to suggest remedies based on a review of the practice current in the courts of other less backward provinces.

My own view is, as indicated above, that the process-serving agency should be employed simply and solely on the business of serving processes on parties, and that parties should be left to make their own arrangements for producing their evidence. I do not believe that any serious failure of justice would result from this change, while the service of processes on parties would be accelerated and improved, as the agency would be able to concentrate its energies on this latter business. The process-serving establishment could also be reduced, and a good deal of public money would be saved, not to mention the economy of time and paper now wasted over recording oral evidence.

4. I do not think any alterations in the present method of recruitment of judicial officers would have the effect of speeding up proceedings.

5. There are now no " district munsifs " in the Punjab. Sub-judges, on appointment, might well be made to watch proceedings in the courts of selected sub-judges of experience for two or three months, before being allowed to try cases by themselves. Most of our judicial agency is " amateur " but a man of average intelligence does not take long to pick up the necessary knowledge of law and procedure.

6. Transfers of judicial officers naturally cause delay and impede the course of justice. On the other hand, sub-judges have a good deal of drudgery, and are apt to get stale if left too long in one district. One year should ordinarily be the minimum, and two years, the maximum. District judges should be transferred after three years.

7. I would deprecate the fixing of any standard of efficiency based on mere outturn, as likely to lead to the shelving of troublesome cases and concentration of attention on short and simple cases. Monthly statements of work are inevitable, but too much importance should not be attached to the " tale of bricks." The art of manipulating statistics is only too well understood in this country.

8. The concentration of many civil courts in one place is, on the whole, a convenience, and does not lead to delay. The supply of pleaders in each place is governed by the demand for their services.

Litigants naturally prefer pleaders with a reputation for ability. Increased distribution of courts would not improve matters in any way, except that it might give more chance to inferior pleaders and thus lead to increased overcrowding of the legal profession.

9, 10 and 11. No changes are required in this district.

12 and 13. District judges, who also have heavy criminal work as sessions judges, should be relieved of all miscellaneous work, such as insolvency, guardianship, probate and succession certificate cases. In heavy districts, land acquisition cases should also be made over to the senior sub-judge.

14. Village panchayats have been a complete failure in the Punjab, mainly because they had no exclusive jurisdiction. I do not think they should be entrusted with such jurisdiction, as they do not command public confidence. In these days of improved communications, they are an anachronism.

17. I do not recommend the investing of sub-registrars as such with civil jurisdiction of any kind. Some subregistrars might be appointed honorary civil judges.

18. No change is required.

22. I always look at appeals when filed, and pass orders as to whether they are to be fixed for *pakki* or *kachhi peshi*. I never dismiss an appeal without sending for the record. This procedure should be enjoined on all subordinate appellate courts.

24. I would abolish the system of summoning witnesses through court, as recommended under question 3.

28. Parties should be allowed to have notices and summonses sent by post registered for acknowledgment, on their own responsibility. Such service should be considered effectual, unless proved to be otherwise.

30. Parties frequently assist process-servers in the service of processes, and no rules on the subject are required.

31. The art of framing issues can only be learnt by experience, and by verbal instruction given by inspecting officers. In most districts, district judges are too busy to spend much time in inspecting subordinate courts.

37. Courts should have discretion to cut short the examination and cross-examination of witnesses, by a brief written order. Oral evidence is almost invariably useless, and no injustice would result from curtailing it.

41. No change in present practice is required. The suggestion at the end of the question is impracticable.

43. The art of writing judgments of suitable length can only be attained by experience and by instruction given by inspecting officers.

49. It is practically impossible, at present, to try cases continuously. See suggestions under question 3.

66. I have no remarks to make on the main parts of this question. In regard to the query "In simple mortgage suits is there any necessity for a final decree," I would point out that, in redemption suits relating to simple or usufructuary mortgages, it appears to be unnecessary to follow the procedure laid down in Order 34, Rule 7. The decree should be simply to the effect that the plaintiff is entitled to redeem the property in suit on payment of the amount found to be due. No date should be fixed for payment, the period for execution of the decree being governed by the ordinary law of limitation. Failure to redeem within the period fixed in the decree does not, in such cases, debar the decree-holder from all right to redeem, and there is thus no object in fixing a period for payment. I have frequently come across decrees in redemption suits wrongly drawn up in this respect, and it would, I think, be advisable to alter Order 34, Rule 7, in such a way as to remove misapprehension of the law on this point. The rule, as it stands, is clumsily drafted. It should be made clear that it is unnecessary to draw up a preliminary decree in suits for redemption of simple or usufructuary mortgages. One decree only is required in such cases, specifying the amount to be paid for redemption of the property in suit.

Mr. W. deMALAN, I.C.S., District and Sessions Judge, Amritsar, called and examined on Wednesday, the 9th April 1924.

Chairman.—*Q.* You are District and Sessions Judge at Amritsar?

A. Yes.

Q. You have given us a reply to some questions of our questionnaire. I want you to help us generally to get a grasp of the position of the courts in the Punjab. First of all I notice that in the Administration Report, furnished by the High Court, the state of things does not seem to be given as regards each particular court. It cannot tell you what the number of cases were at the beginning of the year in each case, how many new cases were instituted and how many were disposed of. One cannot therefore easily tell whether there is a delay in the Punjab, to what extent and in what part of the province. Can you help us in any way?

A. Statistics are given in lump and are perfectly useless. Unless you have figures for separate courts I think it will be impossible to give any idea. You cannot deal with the courts in lump.

Q. In your court, for instance, at Amritsar do you send up to the High Court every year a statement of the amount of work done in the district judge's court?

A. Elaborate statistics are sent up for each court and every month a statement is sent up showing exactly the state of work. As a matter of fact it is now sent up quarterly for every court. At any rate a statement of pending file in each civil court is sent up to the High Court every month.

Q. And therefore statistics do exist somewhere for each court of the work it has done during the past year and of the state of the pending file.

A. Yes.

Q. Now in your own judgeship what is the position as regards delay? Are the courts congested and if so which?

A. My own court is very congested. I have four to five hundred civil appeals pending. I was given an additional judge for two months and that reduced the pending file by one hundred and directly he went away it came up again. Against every judgment that is passed there is an appeal. Every day I find half a dozen of appeals on my table.

Q. What appeals are done by the district judge? Does he do all appeals from the subordinate judges?

A. A certain number of appeals go to the senior sub-judge.

Q. Apart from that the district judge has to do all the appeals.

A. Except those which go to the High Court.

Q. How many appeals were disposed of last year in 1923?

A. I have not got figures.

Q. I want to find out the amount of delay. I understood you saying that four hundred appeals are waiting. Taking one year with another what number of civil appeals does your other work give you a chance to dispose of in a year? Can you do three hundred appeals in a year?

A. I think two hundred as a rule. At the present moment I have got about a couple of a dozen of civil appeals pending from 1922 and four hundred from 1923 and the rest of 1924. I suppose eighty-four units should be disposed of in a month which should consist of at least three sessions cases and the rest civil appeals.

Mr. Justice Stuart.—*Q*. Where is that—in the High Court order?

A. I think you will find that from the Registrar.

Q. Is that the standard laid down for the sub-judge?

A. They have got a particular standard.

Chairman.—Then practically the 1923 appeals have not been touched yet.

A. They are being done steadily. You cannot confine yourself entirely to old appeals. You have to turn out a certain number and every day I have a small number of civil appeals which are still waiting to be heard.

Q. Apart from civil appeals have you to do any original work?

A. Occasionally I have to try suits under the Patents Act because the senior sub-judge cannot try these cases. I also do probate cases. I do not do insolvency and succession certificate. I also do land acquisition cases. They are very troublesome. They are practically big civil cases.

Q. Is that the usual rule throughout the Punjab that the district judge does land acquisition, probate and patent cases?

A. Yes. But if a district judge is posted in a light district he has to do miscellaneous work as well. It is very troublesome indeed.

Q. As regards the portion of your time that is engaged on civil work, do you think that it is just the same as that engaged on criminal work?

A. I devote one day in a week for criminal work and two days for sessions cases. You might say that I devote three days for civil appeals.

Q. When do you do probate work?

A. This work is often put in on those days which are fixed for doing civil appeals and land acquisition cases are generally put on criminal appeal days because this arrangement suits the Public Prosecutor who is also Government Pleader. As a rule these petty cases are put on civil appeal days and civil work thus suffers.

Q. As regards lower courts in your district do you get sufficient time to inspect them yourself?

A. In Amritsar I have not inspected any court. In fact I do not get any time for this purpose. A High Court Judge came himself and inspected them. In fact it is not the practice there. There are so many courts that it is difficult for the judge to find time for their inspection. Much of the time is taken up by his own work. In other districts I always used to inspect munsifis, especially outlying munsifis. I always inspected them very carefully and also some of the sadar munsifis.

Q. Apart from that, do the lower courts send up statements of delays showing how many cases are pending and how many are very old and still hanging fire? Do they also give reasons why so many cases are pending and why they are so old?

A. Yes, they do send up statements but it is very difficult to check them. It is not possible to know from those statements why they are so old. These statements go to the clerk of the court who brings these facts to the notice of the judge.

Q. So if very old cases are pending the only information that you can get is about those cases which are pending for four months or are older than four months?

A. Yes.

Q. And do you think that it is sufficient to enable you to tell the condition of the court?

A. That can be done only if the judge inspects the courts himself.

Q. I understand that there is further difficulty in supervising courts, I mean lower courts, in the Punjab, namely, there is a sort of index in the beginning of the file simply giving dates of certain phases of the case. No reasons are given why the case was postponed or adjourned on such and such a date. Is that the practice generally followed in this province?

A. The court keeps a *Chitha* in English. There is no separate sheet for recording reasons. Only the dates of adjournments are given on the index of the file and nothing else.

Q. So if you want to find out the history of a case, you cannot pick up the file and find out everything in chronological order?

A. No. Very often if an old case comes up before me, I order my reader to make a brief summary of the case showing why and when the different dates were given.

Mr. Justice Stuart.—*Q*. Is it not a fact that it is in this province only that reasons for adjournments are not given, and that such reasons are given in all other provinces?

A. Here in the Punjab we are understaffed. Work here is very heavy and we have to work under great pressure. The ministerial staff is not sufficient to do all the work.

Chairman.—*Q*. Is it possible to gather in a short time whether the courts below are dealing with questions of continuous adjournments and matters of that sort by getting hold of the records and looking through them? Is it possible to know whether a particular case has been sensibly dealt with?

A. The difficulty is that records are kept in vernacular.

Mr. Justice Stuart.—*Q.* Well that is also the position in the United Provinces. In the United Provinces the record is kept in vernacular but in Bengal the record is kept in English. An abstract of orders is prepared in English in the United Provinces and sent up to the district judge, and if when the suit is more than a year old, it is sent up to the High Court in original. This statement gives you everything you want to know. It not only gives facts but also reasons why the case has so long been delayed. Do you agree that such a system could be introduced in the Punjab?

A. Yes.

Chairman.—*Q.* With regard to the trial of cases that have come before you, have you any general impression which you can give us why so much delay occurred in a particular case?

A. There is one difficulty in those cases in which there are about one hundred or more defendants. They have all to be served and sometimes personal service is required. In cases of that kind service will take not less than a year. Meanwhile several of them would die and it is a hopeless business to serve so many defendants. Great delay is caused in getting service effected on all of them.

Mr. Justice Stuart.—*Q.* But you have got Order 1, Rule 8, and I think you can well utilize it?

A. Yes, where the whole village is concerned you can serve them by proclamation or public advertisement.

Chairman.—*Q.* Have you ever substituted personal service by service by registered post?

A. I think that Order 1, Rule 8, can be worked all right. If there are one or two who are likely to contest the suit they may be served personally but a general notice may be given to all others. When all of them have a common interest they can be served with public advertisement. It is intended for villagers and co-proprietors.

Q. If you have only got 10 or 12 people with some interest in the suit, the ordinary way would be to give notice?

A. I am speaking of hundreds. Those cases are tremendously delayed because people keep on dying and the other cause of delay is the way in which people will insist on producing oral evidence. You will come across appeals in which the evidence is never referred to at all. Pleaders never touch oral evidence. They get hold of one legal point and argue on that. Recording of oral evidence is a sheer waste of time and that is a fruitful cause of delay.

Q. Do you find there is an undue delay in the service of process?

A. There certainly is.

Q. Do you think the defendants find it easy to corrupt the peons?

A. That is what I am told.

Q. Have you any idea which form the problem takes most generally? Do you think the plaintiffs in money suits see that the summons are not served because they want to snatch an *ex parte* decree?

A. No. I think the defendant tries to keep out of the way, so he gets the process-server to report that he could not find him, or that he (the defendant) was not in the village.

Q. As regards witnesses you say it is usually entirely worthless to summon witnesses through court, and you want to abolish the system altogether?

A. That was the suggestion. It is rather wild. What I mean is that on the whole no serious injustice would be caused by absolutely abolishing the summoning of witnesses. The average witness is absolutely useless. If he comes willingly he is probably biased, and if he comes unwillingly he is biased the other way. In civil cases one practically never takes notice of oral evidence except in a few exceptional cases. Ordinarily taking down oral evidence is simply a waste of time.

Q. Have you had much difficulty because cases have been constantly postponed as the witnesses who have been summoned did not turn up?

A. I have not done original cases.

Q. Is that a special nuisance in the Punjab?

A. I think it is certainly one cause of delay, and I think the Code gives sufficient power for compelling witnesses to come. At the same time the plaintiff does not want a witness to come, because it so happens that the witness invariably turns against him. A party may go on wasting a lot of time pretending to call a witness. It is almost a kind of fabian tactics.

Q. As regards the hearing of cases, I understand cases are not opened by pleaders at the first instance. They are begun by the subordinate judge by recording evidence on the date of hearing, after issues were framed a month or two ago.

A. Yes.

Q. Do you find that when questions of relevancy crop up, the subordinate judge says that he will decide them at the end of the case? Very often he forgets them at the time of writing the judgment.

A. Yes.

Q. I think that something could be done by insisting upon the strict observance of the rules laid down in the Code?

A. I think it would be very useful to insist on that. I do not remember of ever hearing it done. Of course the real difficulty is that many of the pleaders are overworked and they have not the time to go into the case properly.

Q. Do you think they have proper instructions? When the pleader goes into court, does he know what sort of witness he is going to examine, and what he proposes to say?

A. I think in important cases the parties go to him in the morning and have a sort of rehearsal.

Q. Do you find that the issues are badly framed or well framed on the whole?

A. Well, I think, on the whole the issues are well framed.

Q. Do you think the pleadings are not correctly drafted?

A. The pleadings are very often written in vernacular and are longwinded as a rule. I suppose they are written in a sort of traditional way.

Q. It is rather a rigmarole. Is it not?

A. I think it is.

Q. Is it not generally written in chronological order?

A. It is very difficult to follow. If you have a long plaint of 16 headings, in reply a man starts by saying 'I admit paragraph so and so.' If you write it in English, it is easy to follow.

Q. Is it the custom in Punjab for people to make proper admission or go on denying it?

A. I think they plead well enough.

Q. Do you find any use is being made of interrogatories or notice to admit documents to the opposite party?

A. I do not think they are very much used.

Q. If a man wants to prove that his opponent executed a certain document, one way of proving it is to exhibit an interrogatory whether he has or he has not executed a document?

A. I think he would be asked that surely before the issues were drawn up, if he were in court. This would mean more work for the process-server.

Q. What would ordinarily happen is that the judge would settle the interrogatories in the presence of both the pleaders and parties, and then it is the duty of the parties to take notice?

A. That is not used at all.

Q. As regards documents, what is the subject of Order 12? Does that depend upon what the judge does when settling the issues?

A. Probably it depends on the admissions of the defendant. If he denies certain points, those points are put in the issues.

Q. Supposing in connection with a dispute it is necessary to prove a document, does the plaintiff in the ordinary way proceed to take *subpœnas* for witnesses to prove the documents or is it customary for him to demand an admission of the document from the defendant first?

A. I think probably before issues are settled the court will say "You ask the other side whether they admit the document" and if they do not, the side producing the document will be called to let in evidence.

Q. I gather from you that the framing of issues is taken quite seriously, that is to say, the judge does at that time read the pleadings and, if the parties are before him, examine them at the time and minimise the amount of disputes and then put down the issues. Is that so?

A. Yes.

Q. Do you ever get issues on appeal like this—Is the plaintiff's claim barred by the principle of *res judicata* or estoppel or that sort of thing? Is the plaintiff's claim bad for misjoinder or non-joinder of parties or misjoinder of causes of action?

A. There might be cases of unnecessary issues but I simply pass them off, because the lower court says "No finding is required on this point."

Q. Do you find that the pleaders of parties, instead of arguing the case at the finish of the case and the judge giving decision soon after, take a long date for arguments, and turn up with a lot of unnecessary contentions after having had 2 or 3 weeks to manufacture?

A. I think many courts prefer to give a date for arguments because they have got a long cause list and there are a lot of people waiting in many cases. It is very difficult to hear arguments at once in a difficult case dealing with a whole lot of evidence. I think as a rule both the courts and the counsel prefer to have a date if there are a lot of documents to be looked into. I think that in big cases it is reasonable to have time for arguments. In ordinary cases I would prevent it.

Q. I was only asking whether too much of that is done. Does it tend to unnecessary adjournments?

A. I think some courts probably do it.

Q. Do you find judgments hanging up for a long time after the arguments are finished?

A. Some judges are very bad in that respect.

Q. Is there any return in which they have to state the number of cases where judgments are kept for over a month?

A. There is no such statement showing the interval between the end of the case and the date of judgment.

Q. As regards the office work, I rather think that it is somewhat different from what it is in Bengal. I understand that each plaint is filed in one and the same office and when that has been filed, it is distributed by the senior sub-judge to the particular judicial officer who has to deal with it and each particular judicial officer other than the senior sub-judge, I understand, has a bench clerk but not an independent office of his own. Is that the position?

A. Yes.

Q. In Bengal at sadar stations if you have a district judge, a sub-judge and a couple of munsifs, each munsif in addition to his bench clerk has a man who is called sheristadar, and a couple of clerks, one of whom is probably an execution clerk and his office is an entirely independent unit. When a person comes to file a plaint, he files it within the munsif's jurisdiction and proceeds with the case in that very court and puts in all his execution petitions in that court and so on, so that each judicial officer is served by a separate and independent office. I understand you really have one office for all the courts in one particular station presided over by the senior sub-judge.

A. Yes. He does the distribution of plaints. The outlying courts have their own office. Ordinarily something like 10 sub-judges are working and it is a waste of money to have a separate office for each of them.

Q. In Bengal we were suggesting that the unification of office in the sadar station might be made. I understand in the Punjab you have got that.

A. Yes, of course the district judge has got his office separate and the senior sub-judge has got his court clerk.

Q. Apart from the bench clerk that sits in front of each particular judicial officer there is only one office serving all the courts apart from the district judge's court.

A. Yes, the senior sub-judge looks after all the work.

Q. I understand that the execution petitioner does not go to this office to present his execution application but he goes and puts it in a box which is opened at a certain time and then applicant is called on and the matter is dealt with by the judicial officer concerned.

A. I am not sure about the execution petitions. It is usual to have a box for all petitions but I cannot say whether execution applications are put in that.

Q. At any rate there is no doubt that it would be much better if the first presentation of execution application is made properly to someone in the office who deals with that kind of work.

A. Yes.

Q. There is one matter about which I should like to have the benefit of your opinion and that is the question of the jurisdiction of the four grades of subordinate judges. I understand that at present the distribution of powers between these four grades is a comparatively recent matter.

A. Yes, they used to be munsifs and we have now got four grades of subordinate judges.

Q. Fourth grade sub-judge has power up to rupees one thousand.

A. Yes, he corresponds to a munsif.

Q. Then to what point does the power of the third grade sub-judge go?

A. To two thousand and second grade to five thousand and first grade unlimited.

Q. Are you in favour of extending all these powers or do you think that they are reasonable?

A. I do not see any object in extending. It gives a certain amount of distribution of work. A sub-judge of the fourth grade gets many cases because his cases are shorter. I think it is better not to raise them. There will be no advantage in it.

Q. Then as regards small cause court work. I understand apart from places like Amritsar, where there is a small cause court, there are too many cases of small cause court type under five hundred rupees which are not tried by the small cause court procedure. Is that so?

A. Usually a sub-judge is given small cause court power up to rupees hundred. They are difficult cases and unless you have a particular man it may cause trouble.

Q. But do you not think that it is rather a waste of time, if the small cause court power is not extended to rupees five hundred, because there are many cases of small cause court type which result in appeal if they are not properly tried.

A. Certainly. You would have to give small cause court power up to five hundred to somebody at every station.

Q. Is there any reason why that should not be done?

A. I have never tried small cause court cases. It requires fairly a good man to do small cause court cases up to five hundred rupees because these are so much complicated cases. Still on the whole it will probably work all right.

Q. Take a third grade subordinate judge. He is supposed to be able to try original suits up to the value of two thousand however complicated. Simple suits up to five hundred rupees are only little less elaborate than the small cause court suits.

A. The High Court is very reluctant to give small cause court powers. It is a dangerous weapon. Personally I should think that a subordinate judge trying cases up to one thousand can try small cause court cases of five hundred rupees.

Q. Of course revision is allowed but people do not utilise that.

A. Yes.

Q. The next thing which I want to ask you is about second appeals in this province. If a case is not of the small cause court type then I understand there is a second appeal, whatever its value, on the point of law to the High Court. A good many second appeals filed are of very small value.

A. I think so.

Q. Supposing it is a case about agricultural land or other land. The subject-matter of the case is that the land is only worth fifty rupees. Do you think that three trials are reasonable?

A. In the case of land it is only the revenue value.

Q. What will be the market value?

A. It might be any amount. I will leave the right of second appeal in all land cases in which they are allowed now.

Q. Do you get many appeals on questions of landed property whose actual market value is very small, say, Rs. 50 or Rs. 100, *i.e.*, cases relating to small houses, tin-huts, etc.?

A. Yes, there are some appeals of that nature, but I cannot recommend any alteration.

Q. Well, such cases are tried in the first instance by the subordinate judge who sees the witnesses, then it goes on appeal to the district judge or the senior sub-judge who has not seen the witnesses. At present you make findings of facts final but not on law. Now do you think that it would be a hardship if findings on law were also made final? Would there be any great hardship? Do you not think that in small cases like this the right of appeal to the High Court on points of law is unnecessary elaboration?

A. There should be a right of revision.

Q. Well, supposing it was thought desirable that these cases should be tried first of all by sub-judges and then should go on appeal before a bench of two judges, both on points of fact and law, but nothing more and supposing in order to strengthen the appellate court you had selected people who are, let us say, soon likely to be promoted as district judges. Do you think that it would be a good thing if instead of having two appeals there were only one appeal? There would be no right of second appeal and this bench would hear appeals up to the value of Rs. 1,000. Do you think that this system would work well?

A. Would there be a bench in each district or for a group of districts?

Q. That would be for a group of districts.

A. Would that bench be over the head of the district judge?

Q. No. That bench would hear appeals only in cases up to the value of Rs. 1,000.

Mr. Justice Stuart.—*Q*. This system was, I think, introduced in the eighties; are there records of the Chief Court on the subject?

A. I do not know. I cannot give any information with regard to that. I never heard of it.

Bakhshi Tek Chand.—Yes, this system was introduced in the eighties, but was considered to be very expensive and unsatisfactory and therefore stopped.

A. I do not know.

Chairman.—*Q*. We have had a file of the Government of India at one time regarding the introduction of this system, and that was perhaps in the eighties. But it was pointed out that the scheme was very expensive and top heavy.

A. I have no information of that. But I would say that people like the right of appeal.

Mr. Justice Stuart.—*Q*. We have been asking several Indian litigants and they say that they do not cherish the right. Is there ground for that belief? Have you ever enquired from the successful party whether he appreciates the right of the other side to appeal?

A. I think there is a great difference between the English attitude and the Indian attitude towards litigation. I have been getting many commercial cases in Amritsar and people always say that they want to take advantage of all to which they are entitled, at least on questions of law. People there want their cases to be tried in a businesslike manner.

Chairman.—*Q*. Well, I am coming to that question. Have you given direct attention to commercial litigation in Amritsar?

A. I had a good many commercial appeals.

Q. I understand that there were many cases in the month of September of 1920 and afterwards owing to slump in the piece-goods trade. A great many people ordered goods and they actually accepted bills of exchange; but unfortunately the market value went very heavily against them and the rupee exchange also fell. Now we have evidence before us to show that in places like Lahore and Amritsar and Delhi many people accepted bills of exchange, but they would not take delivery of their goods and would not pay the price and so cases filed were kept pending for months and months together. Do you think that Order 37 could be applied in these cases?

A. Well, I cannot say anything about it, but this much I know that there is great delay caused in these cases and it is all due to the fact that our courts are amateur and not expert in commercial matters. At places like Amritsar and Delhi there must be posted expert men, those who have specialised themselves in this respect.

Q. Places like Amritsar and Lahore, I take it, are getting more commercial work every year. Do you not think it would be worth while to do something which may lead to speedy disposal of these cases?

A. Yes, something must be done and those officers should only be posted at these places who have good training in these things. You cannot expect an ordinary sub-judge to do this work. He is accustomed to do title cases. This work is too much for him. I think it will be a very good idea.

Mr. Justice Stuart.—*Q*. Can you imagine any way by which the members of the judicial service could be trained? I think they could get sufficient training at places like Bombay and Calcutta.

A. Possibly, I think that will do.

Q. Do commercial cases receive precedence?

A. Yes.

Q. I think there is a rule to that effect?

A. There might be, but I do not remember.

Chairman.—*Q.* Well now, does that result so far as you can say, in far too many cases being put down for each day, *i.e.*, more than the judge can hope to finish?

A. I think some courts appear to put down too many. I think it is a thing which the judge should manage for himself. If you look at the ordinary court list, it looks certainly appalling. There are so many cases which may fall through by people not being served.

Q. Apart from that do you find that again and again a man comes with his witness and every time the case is adjourned? In the end he does not trouble to bring his witnesses at all.

A. I cannot say. Any responsible judge would not do that. If the man has got his witnesses ready, he (the judge) will take the case.

Q. Don't you think it would be better to have a prospective list instead of the ordinary diary, *i.e.*, when a case is ready for trial, put it down on the prospective list *sine die?* On the due date it should be dealt with. The parties should know when it will come on.

A. I do not think that will be any improvement. Now a man gets his date and he takes it. Otherwise if you let him go without a date, then you have got to send a process-server. His report may or may not be correct.

Q. That won't apply in case of pleaders?

A. I cannot tell. Pleaders occasionally say that they have not been kept on by the party.

Q. The remedy for that is the moment anybody appoints a pleader, he must put the pleader's name on the record as a representative. Then the pleader can't play fast and loose?

A. It occasionally happens that a man has engaged a pleader to start a case and then later on there is a hearing at which the pleader turns up and says "I am not engaged in the case any longer and I am not going to appear." Then the case is decided *ex parte* or thrown out. Then the party comes and says that he was not aware of the date.

Q. You think that the difficulty would be in the people knowing the date?

A. Yes. An ordinary man who comes from a village 40 or 50 miles from the court house, generally wants a *purchi.* I think you must fix the date at the time when the man is there in order to avoid the delay of serving by process. The process-serving agency is very hard worked.

Mr. Justice Stuart.—*Q.* How would this system work in the Punjab? When the plaintiff files a suit, he is made to give his registered address as a preliminary before he is allowed to do anything further. As soon as a defendant is served and appears, he is made to give his registered address before he is allowed to enter a defence. This is a system that has been introduced elsewhere. After that you don't send any process at all. You simply send a registered letter. Whatever excuse he may give afterwards, it will not be listened to. Would that work in Punjab?

A. I think it would be very difficult. However, I do not see why it should not be tried.

Q. It is being tried in our province. If the man says he has not received it, we do not listen to him. But the point is registration of address. If he changes his address, it is his business to inform the court?

A. When we once serve a defendant, he then comes and he is given a date. There is no further communication with him unless some change of date is necessary in which case he has got to turn up.

Q. Are there any rules as to the keeping of case diaries in the judges' own handwriting, or is it much neglected?

A. It is a rule that each judge should make the entries in his own hand.

Q. Does he?

A. I think he does. I have frequently inspected the courts and I found that the diaries were maintained all right. I think most of the courts do it.

Q. I find in my own province that this sort of work is usually deliberately shirked, because they say ' we have never done this before, why should we do it now.' And so we find this wants constant watching to see whether they really do it. To my mind the case diaries is one of the important things. Do you think that on the whole they do keep them reasonably well?

A. I think in some districts where the district judge has time to inspect the courts they keep the diaries all right.

Q. How many times has the inspecting judge inspected the courts at Amritsar during the last 5 years?

A. I think nearly every year.

Q. This year how long did he stay?

A. I think 4 or 5 days, because there are a very large number of courts to be got through.

Q. I find your High Court Rules appear to me to be most admirable. Do subordinate judges ever read them? They lay down how a case should be tried, what they should do, etc.

A. They are not followed.

Q. Are these men really examined on them? Don't you think a very great deal could be done by training them? They are told not to give an adjournment except for a good cause. They are told not to let in a document when it is filed at the last moment, etc.

A. They do that because it is almost certain the appellate court will let it in.

Q. Don't you think it is very necessary to improve the training of your subordinate judges? Before they take their seat on the Bench, they have no training at all.

A. No. It would be a good thing if they could be trained, but I don't see who is to do it.

Q. I think you have got in the Punjab an excellent system of training junior civilians and revenue settlement officers. Why should you not give a similar kind of training for your judicial officers?

A. We had judicial training for assistant commissioners at one time, but I do not think it did very much good. The man who sat in the court had no responsibility.

Q. Had he anybody with him?

A. He was sitting with a judge.

Q. My suggestion is to appoint a special instructor to read with the pupil, to point out to him the difficulties, give him pleadings, ask him to criticise and in addition make him attend the court and take him through the voluminous rules and see that he does not cram just as he does for examination purposes.

A. It will be certainly a good thing if it could be done.

Bakhshi Tek Chand.—*Q.* You remember that before 1914 when the new scheme was introduced the insolvency, probate and guardianship work was done by the district judge (of the old style) and not by the divisional judge. Was it the practice?

A. I think it was.

Q. What do you think of the present system under which the district judge (new style) is made to do this work? It has now been tried for 10 years.

A. Personally, I think it never ought to have been done. A senior sub-judge becomes a district judge and there is no reason why he should not do it.

Q. From the point of view of litigant public do you think it would be a great hardship if this work is delegated to senior sub-judges?

A. I cannot say. I think a senior sub-judge is perfectly competent to do the work and he does it very well and probably the district judge who is hard worked could not attend to the work carefully and in good time.

Q. Do you think that we may revert to the old practice?

A. Yes.

Q. With regard to the Indian Civil Service gentlemen who are appointed as district judges, do they in these days have much experience of civil work before they are appointed district judges?

A. I did a certain number of civil cases as a munsif and then as a sub-judge. I do not know what happens now-a-days. The average Indian Civil Service district judge has very often done no civil work. They do not get any training in civil law.

Q. Don't you think that some sort of training is necessary before they are appointed as district judges?

A. I should think it would be a good thing.

Q. Apart from judicial training what is your opinion as to their having actual experience in doing civil work?

A. I think they ought to be appointed to work as sub-judges for a certain time before they are made district judges.

Q. With regard to the suggestion about the registration of addresses do you think the system will work in this province where most of the litigants are illiterate and several places have not got post offices?

A. I think ordinarily there would be somebody in the village to read the thing.

Q. Will that be an improvement upon the present system?

A. Personally I do not think it is necessary to have any change. If any notice is given I would have it given in the ordinary way. If the other side wishes to take the risk of sending it by post, I would leave it to his discretion.

Rai Bahadur GANGA RAM SONI, District and Sessions Judge, Gujranwala.

Written Statement.

1. A. In this province, very few original suits are tried by the district judges, their main function being the disposal of civil appeals. A civil miscellaneous appeal against an order should ordinarily take not more than four months for its disposal; and a regular appeal not more than six months.

Original suits in subordinate courts should ordinarily take for their disposal the period as detailed below:—

(*a*) Title suits, one year.

(*b*) Money suits, six months.

(*c*) Small causes, four months.

B. Execution proceedings in civil courts.

(*i*) Cases in which movable property is attached should ordinarily take not more than six months for their disposal.

(*ii*) Cases involving attachment and sale of immovable property should ordinarily take one year.

2. The period actually taken for the disposal of the civil proceedings as detailed above exceeds, in the majority of cases, the reasonable period given above. The reasons for this are mainly as follows:—

(*a*) In cases, in which the number of defendants is large, a good deal of time is taken in effecting service of summonses on them. Generally speaking the defendants try to evade service.

(*b*) In contested cases, the party in possession of the property, which forms the subject-matter of the litigation, does his best to prolong the case.

(*c*) A good deal of time is taken in getting the witnesses served. For this delay parties as well as the process serving agency are to blame.

(*d*) The non-observance of important provisions of the law of procedure by the presiding officers of the courts, for example, (*i*) In a good many cases, the parties are not carefully examined before the framing of the issues and the result is that proper issues are not struck and unnecessary evidence is permitted to be led. (*ii*) The provisions relating to the production of documents by the parties are not carefully observed and the result is that sometimes documents materially affecting the merits of the case are permitted to be produced at a late stage of the case which necessitates the adjournment of the case in order to enable the other party to rebut that evidence. (*iii*) Preliminary points relating to jurisdiction, court-fees, etc., which should be decided before proceeding with the case on the merits, are not so decided. (*iv*) The provisions of Order 11, Rule 1, relating to discovery by interrogatories are not generally observed. (*v*) Sometimes on account of rush of work, the presiding officers are obliged to adjourn cases for hearing arguments or pronouncing judgments.

In this connection, it may be stated that the quick disposal of a case depends to a considerable extent on the personality of the presiding officer. If the presiding officer is a competent man and is acquainted with law and procedure, he will be able to save a good deal of time by exercising effective check on the parties and their counsel.

The High Court have recently issued orders in connection with the attendance of witnesses and other cognate matters and it is hoped that a careful compliance with those instructions will tend to the more speedy disposal of cases.

Execution of decree proceedings.

The delay in the disposal of execution of decree proceedings is mainly due to the following causes:—

(*i*) Institution of a large number of frivolous objections, mainly at the instance of the judgment-debtors.

(*ii*) Inefficiency of the process serving agency.

(*iii*) The presiding officers generally do not pay personal attention to this important branch of their work and leave it to the ministerial staff.

(*iv*) In cases where agricultural land is involved, the proceedings have to be taken through the Collector and a good deal of time is wasted in the office of that officer.

3. If proper steps are taken to remedy the defects pointed out above and the rules of procedure are strictly enforced by the presiding officers, it is hoped that the period, during which civil proceedings are now kept pending, would be appreciably shortened. In this connection the following points deserve careful consideration:—

(*i*) Special care should be taken in the appointment of judicial officers and only those persons should be appointed who are fully qualified and equipped for the job.

(*ii*) Provisions relating to the service of summonses on defendants should be relaxed. Experience shows that in cases in which the number of defendants is large, a good deal of time is required for effecting personal service on all the defendants. A considerable time would be saved if a provision were made in law for service of summonses on defendants through the ageny of Post Office by means of registered letters.

(*iii*) The law may be amended so as to authorize the parties to effect service of the summonses on their witnesses without the assistance of the process serving agency and to make the witness, who fails to attend court in spite of such service, liable to the same penalty as is now provided for non-appearance after service, through a process-server. This provision, however, should not affect the discretion which is vested in presiding officers under the law.

(*iv*) Parties should be permitted to examine and cross-examine each other at length before any steps for the summoning of witnesses are taken.

4. The present rules for the recruitment of subordinate judicial officers are satisfactory on the whole but it would be better if the appointments are made by competitive examination.

Honorary civil powers should not be conferred on persons who are not qualified to exercise them.

5. Yes, I would suggest that every new recruit for the judicial service should undergo judicial training for a period of three months at least and that during this period he should sit with the senior subordinate judge or such other officer as is selected by the district judge in order to pick up the routine and to watch the conduct and trial of cases.

6. Yes.

7. It is very difficult indeed to lay down any hard and fast rules with regard to the standard of efficiency for an officer as regards the amount of work done because a good deal depends upon the nature of the cases to be disposed of, which differs in different districts. In each district, the district judge is the best person to decide whether a sub-judge working under him has turned out sufficient amount of work or not.

8. Not to any appreciable extent, so far as my experience goes.

9. If the appellate powers of selected district judges are enhanced up to Rs. 7,500 it would lead to more speedy and less costly justice. The reasons in support of this suggestion may briefly be stated as follows:—

(*i*) The value of immovable property has gone up by leaps and bounds in recent years and on account of this increase in price, the district judges are debarred from hearing appeals in cases which they used to hear 10 or 15 years ago. The present suggestion, therefore, if adopted, would only enable district judges to hear appeals which they used to hear previously.

(*ii*) The congestion of work in the High Court will be appreciably reduced.

(*iii*) Parties would be saved a good deal of money which they have to spend on printing of records, etc.

(*iv*) The appeals will be more speedily disposed of in the district courts than they can possibly be disposed of in the High Court on account of congestion of work.

12. No.

13. I have consulted the leading members of the Bar and they are opposed to any change in the law as it stands at present.

15. Yes.

16. (*a*) Selected senior subordinate judges in this province may be given summary powers as contemplated by section 128 (*2*) (*f*) of Civil Procedure Code up to the value of Rs. 1,000 in both classes of suits.

17. The public are deadly against sub-registrars being invested with civil powers.

18. No.

22. The power given in Order 41, Rule 11, is being duly exercised. No suggestions in this connection are called for.

24. See answer to question No. 3 in which changes with regard to service on defendants, service on witnesses and examination of parties are suggested.

25. Yes. See answer to question No. 3 where procedure similar to that under section 106 of the Transfer of Property Act is suggested.

26. The forms of plaints given in the Civil Procedure Code are generally adhered to. The courts have got ample powers to burden the plaintiff with costs in cases of non-compliance with the provisions of law and no further suggestion is necessary.

27. The provisions of Orders 7 and 8 of Civil Procedure Code as regards pleadings are not much neglected in this province to my knowledge.

28. The answer to the first part of the question is in the affirmative and to the second part in the negative.

In the cases of use of Post Offices for the service of notices and summonses, the only precaution that can be suggested is that the service may be made by means of a registered letter and may be attested by a witness.

29. Yes.

30. There is no objection to this suggestion being adopted.

31. The parties should be examined and cross-examined in detail before issues are framed.

32. Yes. The provisions of Orders 10, 11 and 12, Civil Procedure Code, are not generally observed. Generally speaking carelessness on the part of the presiding officers is the main reason for such neglect. In my opinion, this complaint would be remedied to a considerable extent, if the appellate courts take due notice of such omissions and bring them to the notice of the officers concerned.

33. Yes.

34. The provision in Order 16, Rule 16, clause (1) is generally enforced.

35. It is a fact that in this province much unnecessary and avoidable oral evidence is let in by the parties. In order to remedy this evil, the following suggestions are submitted:—

(*a*) The courts may be empowered to refuse to summon any witnesses whose evidence, after examining the party calling the witnesses. they consider to be unnecessary for the decision of the case.

(*b*) The courts should be empowered to burden with costs the party calling such unnecessary witnesses.

(*c*) The courts should also be empowered to declare that the costs of unnecessary witnesses shall not be costs in the suit.

36. I am in favour of the suggestion with the reservation that the party allowed by the court to produce oral evidence should not be called upon to prepay special costs.

37. I am not in favour of the suggestion that courts should have discretion to fix a time limit for the examination and cross-examination of witnesses.

40. The present procedure is working satisfactorily on the whole and I am not in favour of the proposed alteration because it would be very difficult to prove in a satisfactory manner that the legal representative was aware of the proceedings.

41. Yes, the delay is caused in some cases by the difficulty of appointing a proper guardian *ad litem* for minor defendants and in order to avoid further delay the courts in some cases appoint an official of the court to act as guardian *ad litem* for the minor. This procedure has been found to work satisfactorily on the whole. The proposed suggestion does not appear feasible because if the number of proposed guardians is about half a dozen or so, it might take several hearings before the question is finally decided, as one or two of them might appear at each hearing and refuse to act as guardian *ad litem* for the minor. Thus, the proposed suggestion, instead of speeding the disposal of the case, would prolong it unnecessarily.

42. No undue advantage is taken.

43. No.

44. Not in all cases.

45. Dates for adjourned hearings are generally given by the Judges themselves.

46. Pleaders are usually consulted and no special rules are required.

47. Generally speaking, trials are not unduly delayed by the examination of witnesses on commission. I would, however, insist on written interrogatories being field and would allow oral examination in special cases only. The powers already conferred on commissioners are quite sufficient.

48. The answer to both the questions is in the affirmative.

49. Suits are not tried continuously day by day in the mofussil courts. This is due to the anxiety of the presiding officers to show a larger outturn of work than they would be able to do, if they tried big cases from day to day. The High Court has recently issued orders to enforce this rule.

52. No suggestions to offer.

53. No objection to the extension proposed.

54. No objection.

55. May be modified.

56. I am not in favour of curtailing the period given in section 48, Civil Procedure Code, for the execution of money decrees from 12 years to 6 years. I am in favour of the suggestion that a decree-holder may be allowed to apply for execution of the decree at any time he finds it convenient to do so, provided he does it within the period of 12 years. If, however, this suggestion is not adopted, then I would recommend that in Article 182 of the Limitation Act the starting point be considered to be the date of the last order on the last application.

57. I have no objection to the proposed alteration.

58. The suggested alteration is eminently desirable.

59. The transferee of a decree may be allowed to apply for execution under the circumstances mentioned therein.

There is no objection to the 2nd proviso of Rule 16, Order 21, being deleted.

60. Order 21, Rule 21, may be deleted altogether.

61. (*a*) No.

(*b*) There is no objection to the deletion of Order 21, Rule 22.

62. The suggested provision in Rule 21, Order 26, that there shall be no interim stay in the case of money decrees will not work any hardship. I am in favour of proviso of Order 21, Rule 26, being modified as to give greater discretion to the courts.

63. Yes, there is no necessity for special notices. Only one notice in the beginning is quite sufficient.

64. I am not in favour of the rule that in all cases the judgment-debtor should be served with a copy of the proclamation of sale. It would be better if writs of attachment and the sale proclamation are issued simultaneously.

In this province, vakils cease to act for their clients as soon as the suit is decided and therefore the rule that notice of execution should be served on the vakil, who appeared for the judgment-debtor in the suit, will not work well in practice.

65. No.

66. The suggestions contained in (*a*), (*b*), (*c*) and (*d*) may be adopted with advantage.

Generally speaking, too much time is not allowed in mortgage suits for payment.

In my opinion, in simple mortgage suits, it is not necessary to have a preliminary decree at all. The decree that is passed first should be considered as the final decree and if the payment is not made within the time fixed, the decree-holder should be at liberty to take out execution without having to apply for a final decree.

It is not necessary to have a separate personal decree and the decree passed by the court should include a provision that the judgment-debtor will be personally liable for the balance of the decree after the mortgaged property has been exhausted, provided there is nothing in the contract of mortgage against such an order.

67. I would invest the appellate court with the jurisdiction to award exemplary pecuniary compensation in cases in which they are satisfied that they have been asked to stay execution on insufficient grounds.

68. The imposition of the suggested restriction would not work any hardship.

69. The present law as to insolvency does stand in the way of decree-holder getting the fruits of a decree speedily. Unscrupulous judgment-debtors take undue advantage of the provisions of the insolvency law for the purpose of avoiding the execution of decree against them for an indefinite period. So far as my experience goes, there is no undue delay in the disposal of insolvency petitions and realization of assets by receivers.

On consulting the members of the Bar, I am of opinion, that the public does not view with favour the proposal relating to devolution of insolvency powers.

70. Execution proceedings are not frequently delayed by absconding judgment-debtors.

71. At present, much time is taken in proving even registered documents and it would save lots of time and trouble, if the law of evidence is so altered as to raise a presumption in favour of the genuineness and due execution of all registered documents.

Copies of certified copies may also be made admissible in evidence.

72. It is not necessary to retain the provision in mortgage suits that the plaintiff suing on a registered mortgage-deed must call an attesting witness. Mortgage deeds, which have been duly registered, should be presumed to be valid and it should be the duty of the person alleging the contrary to prove his contention.

73. Such secondary evidence may be made admissible.

74. I have no suggestion to make.

Execution of decrees by Collectors.

75. (*a*) Much time would be saved if civil courts are allowed to deal with agricultural land without the intervention of the Collector.

(*b*) The decree-holders would be in a more favourable position for the purpose of realisation of fruits of their decrees, if the provisions of the Land Alienation Act are so modified as to enable the civil courts to order alienation of property belonging to agriculturists.

76. I am not in favour of extending to agricultural lands the rule that future partitions of immovable property should be evidenced by a registered document.

77. I am not in favour of the provision of compulsory registration of contractual partnerships.

78. I am not in favour of change in the present law of registration of documents.

79. Yes, provided the cost of registration is made uniform as suggested.

80. I am not in favour of the proposed change.

81. Yes. The enactment of a rule that no party to a transaction shall be allowed to plead that it is *benami*, will assist in the realisation of the fruits of a decree speedily and prevent unnecessary claimants. Also no party to a document should be allowed to plead that it was never intended to be acted upon.

82. No.

83. In my opinion, it is not necessary to retain the provision in the case of mortgage documents that they should be attested as laid down in the Transfer of Property Act. Sale-deeds, leases and mortgage documents may be treated alike.

85. No.

86. Yes, only official publications should be allowed to be referred to in courts.

87. Customary Law should be codified.

Rai Bahadur GANGA RAM SONI, District and Sessions Judge, Gujranwala, called and examined on Thursday, the 10th April 1924.

Lieutenant-Colonel Roe.—*Q.* I believe you are district and sessions judge at Gujranwala.

A. Yes.

Q. How long have you been district and sessions judge?

A. For the last 5 years.

Q. Before that you were a subordinate judge?

A. I was senior sub-judge.

Q. From your experience, I suppose, as a court of original jurisdiction, you say that title suits should take one year, money suits six months and small cause cases 4 months. That is what you consider a reasonable time?

A. Yes.

Q. Then we have cases in which movable property is attached and you think six months are sufficient for their disposal. Don't you think it is a long time, because movable property will deteriorate?

A. Not all movable property. Some are apt to deteriorate. The rules provide that the property may be sold before objections are disposed of.

Q. In attachment cases in which animals, such as buffaloes are attached, don't you think there ought to be some procedure by which they can be disposed of?

A. It would be desirable if some such procedure can be put into force.

Q. If the court would take it up and make special arrangements to dispose of cases of this description, don't you think it would be rather desirable?

A. I think it would be desirable. I put in six months after taking into consideration the difficulty experienced by decree-holders in getting the fruits of their decree. I think it would be better to curtail this period.

Q. You think it would take one year for disposing of cases in immovable property. Don't you think it would rather facilitate matters if, under no circumstances were the proceedings to be suspended? For instance, if there should be *primâ facie* case of attachment then the property should mutually either pass into the hands of a decree-holder or put up for sale. At present they are held up for not one year but for two years.

A. This time has been given with reference to the law as it stands at present. The proclamation of sale, the time fixed for objections, etc., have to be taken into consideration. Of course if a simpler procedure is enforced time could be curtailed. In this connection I may submit that in cases where agricultural lands are concerned, the cases have to be sent to Collector. As you are aware much time is wasted in the court of the Collector.

Q. But this is owing to the provisions of the Land Alienation Act. I am referring to houses where objections are made. These objections are often spun out by the objector as long as possible. If the property has passed out of possession, it would be in the interest of the objector who is generally the judgment-debtor.

A. But the disposal of the objection is not the final order. Still the judgment-debtor or the objector has a right to bring out a regular suit, it can be spun out for a number of years.

Q. If the property has passed into the possession of the purchaser?

A. He would obtain an order before the sale is made staying execution.

Q. That order has not to be passed.

A. I have submitted that this period is given with reference to the law, as it stands at present. If the modifications, as suggested by the Committee, are carried out, a smaller period may be sufficient for the purpose. Still taking everything into consideration the practice is that orders staying further execution are stopped and of course the guiding principle is that if the property is sold and made over to the purchaser, it is very difficult to restore it if the objector succeeds.

Q. What about the suspension of proceedings in a civil court?

A. I am in favour of this suggestion, because judgment debtors take undue advantage of the law by bringing frivolous objections through their relations or friends and the decree-holders are deprived of the fruits of their decree. They should get it sooner than they get at present.

Q. You say that a good deal of time is taken in effecting summons on defendants and generally speaking the defendants try to avoid service. Is that your experience?

A. Yes.

Q. There has been a suggestion that the moment a case is instituted, the plaintiff should register an address and the defendant should also be called upon to register an address and these registered addresses should be utilised throughout the rest of the case, that is to say, an envelope should be sent to the registered address and it should be assumed that the letter has been delivered. Do you think that would be a good idea?

A. I think it is.

Q. When there are a large number of defendants in a village, you might always serve summons by beat of drum?

A. That is one of my suggestions.

Q. You think it would be a good thing. When there are 60 or 70 defendants in a village they all know what the beat of drum is for. But some of them keep out of the way specially with a view to getting the decree set aside on the ground that they were not served, if the judgment should be adverse. It should always be taken that, as a matter of course there should be no endeavour to serve defendants individually, but simply always by beat of drum?

A. The law as it stands provides that the plaintiff may, with the permission of the court, get some of the defendants served personally and the others served by substituted service, but that depends on the plaintiff. In some cases the plaintiff may not choose to take benefit of the provision and therefore if the court is empowered in cases like that to select a couple of representative defendants, so to say, and effect service on them by person and service on the others by beat of drum, then I think the ends of justice would be generally met.

Q. If in the very first instance it is served by beat of drum, you think it would expedite matters?

A. Yes, in a majority of cases. The interests of the defendants are generally identical and if one of them knows it can reasonably be presumed that the others also know it.

Q. Have you any suggestions to make to improve the service of process generally throughout the province?

A. I have made some suggestions. One suggestion is that service through post by means of a registered letter may be adopted and may be considered sufficient service under the law.

Q. Supposing that he refuses it?

A. Then *ex parte* proceedings may be taken.

Q. There are two sides of the question. One is that he may himself refuse and the other is that the plaintiff may not want him to be served and may say that he has refused.

A. My experience shows that there are only rare cases in which the plaintiff wishes to take that undue advantage. Generally speaking it is the defendant that wants to evade service of summons.

Q. Do you think that the affidavit of the postman or the peon supported by the signature of the lambardar that service had been refused would be quite sufficient?

A. Yes.

Q. Have you any other suggestions for improving the service?

A. The sub-judges often complain that a process-server doing faulty work is not punished. They report to the senior sub-judge and he having other duties to attend to cannot give personal attention to those matters. Or he does not take the serious view that they take. The result is that the faulty work done by process-servers is not sufficiently punished. I would submit that if the court concerned is authorized to punish the process-servers without reference to the senior sub-judge or the district judge it may have some beneficial effect.

Q. Would you not give the process-servers a right of appeal?

A. Yes, the right of appeal will be there.

Q. Is there much corruption among the process-servers? What is your experience?

A. Yes, that is a fact.

Q. The process-server gets tipped from a party who is desirous of having the process served.

A. That generally happens. In this connection I might submit that the process-servers alone are not to be blamed. The parties are not free from blame either. In fact the initiative for this wrong service comes from the party who wishes to take advantage of the non-service. If the parties act in a more honest manner I think that corruption among the process-servers would diminish.

Q. Do you think there is more corruption to evade service than to get the process served?

A. Yes.

Q. You say that the process-server even if he does not receive a fee from the plaintiff will serve the summons and requires to be paid not to serve it.

A. I would not go so far. I would say that in a majority of cases the process-servers are tipped for non-service. In a good many cases they have also to be tipped for effecting service on defendants and witnesses who don't like to be served easily.

Q. In fact the only sure way of a party getting a process served is to give a tip to the process-server.

A. Practically so.

Q. You think that the enhancement of their pay would not improve things?

A. I do not consider that the increase in their pay would make any appreciable improvement in their work. In this connection I made another suggestion that the parties concerned may be authorized to serve summons on their own witnesses.

Q. If a witness is not served the party concerned simply applies for fresh summons. Don't you think that if the party were made to produce his own evidence it would be a very good thing?

A. As your experience shows at least respectable witnesses do not like to come to court without being summoned because generally speaking the question is asked whether he got summons from court to attend as a witness. The idea prevails that the evidence of a man becomes open to attack and suspicion if he attends court without a summons.

Q. I think that surely the parties ought to see that they come to court.

A. We take into consideration there are two classes of witnesses. One class of witnesses would come gladly with the party concerned, because they are interested in him or they are persons who would like to help him or who would like to tell the truth. There is another class of witnesses which may be said to be hostile and they won't come with the parties and they have to be summoned through court.

Q. Surely a man is not going to summon a hostile witness to give evidence on his behalf.

A. The plaintiff takes summons to a defendant to prove certain documents executed or attested by him or he produces a relative of the defendant to prove certain documents which are attested or executed by him.

Q. I think you recollect that there is a ruling of the Privy Council which strongly deprecates the practice of one party calling the other party as a witness and then put a number of fishy questions in the hope of extracting some information which would be advantageous to his case.

A. There was a ruling some years ago. It appears to me that the idea of this honourable committee is to simplify the proceedings in cases by allowing one party to examine another at great length before issues are framed or before evidence is let in.

Q. It is the court that should examine both parties.

A. I would submit it would be better to allow the parties to examine and cross-examine each other because the parties know much better than the court itself and they will be in a better position to bring the necessary material on record than the court.

Q. There are many cases in which the plaintiff does not know his own case and he puts the other party in the witness box and then puts a number of fishy questions in the hope of extracting information which would be useful to his case.

A. The number of such cases is very small and I don't think the defendant in that case can be expected to help the plaintiff at all.

Q. You think it would be a good thing if there was mutual examination and cross-examination of both the parties.. Surely you would be then hearing the evidence before you even frame issues and each would be cross-examining the other which may not be beneficial to his case.

A. The law, as it stands at present, allows the parties to be examined by the court. I would only go a step further and ask the parties to suggest questions to the court. There would be no difference for all practical purposes.

Q. There is a good deal of difference between suggesting questions to the court and submitting the other party to cross-examination.

A. The court can use its powers and disallow unnecessary questions.

Q. You cannot cross-examine a witness that you have summoned unless he has turned a hostile witness.

A. I think that if this procedure is adopted, the calling of much evidence that is done at present would become unnecessary. Taking a case on accounts for instance, if the defendant is examined with regard to each and every item entered into and attested by him and he admits many items, then only those items which are not admitted would be at issue and the plaintiff would be required to produce evidence with regard to those items only. Now, as the case stands, the defendant puts in a plea that he is not liable for any amount.

Q. You mean that the defendant could be examined on the plaintiff's books because it is the plaintiff that comes into court.

A. Yes. That would simplify matters and the letting in of unnecessary evidence.

Q. There is no occasion to let the plaintiff to cross-examine him. The court should tell him to say whether he admits or denies and then get on to issues.

A. It would not make much difference whether the examination is made by the court or by the party.

Q. You think a good and careful examination of the parties would greatly facilitate the decision of a case and it is not done properly at present.

A. Yes.

Q. Now we come to the next point as to the execution of decrees. A large number of frivolous objections are put up at the instance of the judgment-debtor and disposed of. That may rather delay the execution of a decree but that does not prevent the decree-holder getting his money.

A. Unless the property is sold how can the decree-holder get his money. Of course if the property is sold pending objection the decree-holder will get his money.

Q. Do you not think that a decree-holder gets a good deal more than the decretal amount? They do not trouble to send a return that the decree has been satisfied. If the decree-holder has advanced one hundred and fifty rupees he gets a bond for three hundred and obtains a decree for four hundred. When he has got his original money satisfied he does not make any return.

A. That happens in some cases but not in many cases.

Q. The other witness said that in great many cases the decrees are satisfied out of the court.

A. That is not my experience. There are some cases in which the decrees are satisfied out of the court but the number of such cases is limited.

Q. I do not mean that the money is paid but the creditor is paid enough.

A. The decree is satisfied. I do not mean that he gets money, it may be satisfied in some other way . But such cases are not many.

Q. You do not agree to the idea that large number of decrees are satisfied out of the court.

A. No.

Q. The presiding officer generally pays very little attention to the execution work.

A. Yes.

Q. He lets the reader write the order and he simply signs it.

A. Yes. Now of course there is a High Court rule that all these orders should be written by the judge himself but that order has been issued only recently.

Q. But for twenty years the High Court has been telling the judicial officer to pay more attention to the execution work but it had very little effect.

A. Yes, the results are very poor indeed.

Q. The next point is as to the agricultural land. You say that proceedings have to be taken through the Collector and a great deal of time is wasted in satisfying the decree when agricultural land is involved. Can you make any suggestion as to how the procedure can be improved?

A. I have suggested that intervention of the Collector should altogether be abolished. The civil court should be empowered to deal with the agricultural land without reference to the Collector.

Q. And that it should be attached and sold just like another property.

A. Yes.

Q. What about the Land Alienation Act?

A. I have made a suggestion later on, on that point, that the law may be modified so as to authorize the civil courts to sell land in execution of a decree. At present judgment-debtors who are agriculturists enjoy more privileges than any other judgment-debtor does. Their land, cattle, house and grain cannot be attached to any great extent. It is very difficult to execute a decree against an agriculturist.

Q. I think there will be a difficulty.

A. I know there will be difficulty, but as I was asked to make a suggestion I have put forward my views.

Q. Supposing now you get a man who has no assets. He would probably enter into collusion with some *bania* and get money from a money-lender who would bring a collusive suit and then in execution of the decree his land would be sold.

A. The provision in the Land Alienation Act will have to be modified. As the law stands at present the land cannot be sold.

Q. But that question is for the Financial Commissioner, because it is he who frames and lays down rules?

A. My suggestion is that the law will have to be altered.

Chairman.—I think what Colonel Roe is driving at is that at present it is apparently a matter of broad policy to protect the agricultural tribes, that is to say, the intention is that money-lenders should not be able to give credit on the strength of the holding or cattle and I suppose that legislation was introduced because it was found that money-lenders, if left to themselves, would bring the agricultural tribes into a terrible condition. If you are going to put agriculturists exactly in the same position as commercial men, then you would be simply ruining them. I take it that experience has shown it that agriculturists want or stand in need of protection against somebody, presumably money-lenders.

A. That is quite so as the law stands at present and as you have been pleased to remark.

Q. Great many complaints have been made against law courts for decrees being infructuous, but it is the policy under the legislation that a certain kind of decrees against certain kinds of people shall be infructuous. The trouble is that law courts are blamed for it because the result is that they refrain from doing something which legislation does not intend them to do. I think that is the real position?

A. Yes. that is quite so. Civil courts are practically helpless so far as agriculturist judgment-debtors are concerned.

Q. But they are meant to be helpless.

A. This Committee has to express its view that civil courts are not to blame for it, but the whole blame is that of the law as it stands at present. For instance I will give you a concrete case. An agriculturist judgment-debtor owns 100 ghamaons of land and there is a decree for Rs. 500 against him. Now if the decree-holder wants to get his amount he cannot do anything by proceeding against him. But if the judgment-debtor disposes of 2 ghamaons of his land he can easily pay off the decree. The decree-holder otherwise is quite helpless, he cannot do anything.

Mr. Justice Stuart.—Q. In cases where the agriculturist judgment-debtor has ample property he can easily pay off the money by selling a portion of it and can carry on with the rest?

A. Yes.

Q. But if he does not pay off, I think the obvious remedy is to arrest him?

A. Yes. The thing is that they place the property at the disposal of the court and therefore it is not reasonable to send them to jail. Although the value of the property may be great, it is equal to *nil* for the purposes of execution.

Chairman.—Q. In such a case as that when a man has got plenty of property with him, what does the Collector do? Does the Collector take an attitude?

A. Yes, the Collector does take an obstructive attitude. The Collector proceeds like this. He says that so much of the land is banjar, so much is under cultivation and they calculate the income according to their data, that is to say, he has got a large family, *i.e.*, his wife, his children and so on and that he requires so much for their maintenance, he has to pay so much as land revenue. He makes so many calculations that very little is left in an ordinary case for the decree-holder. He is practically helpless in this matter.

Mr. Justice Stuart.—Q. What is the reason that the decree-holder does not attach the standing crop on the threshing floor? I understand that they do so very seldom. Are they afraid to do so?

A. Sometimes they experience great difficulty. Money-lenders are afraid to go to the village.

Q. Is it due to there being danger of life?

A. Yes, there have been some cases in which lives have been lost.

Q. Do you think that that is the main reason why they do not take the obvious remedy of attaching crops on the threshing floor?

A. Yes.

Q. But there is nothing in the law to prevent the decree-holder from attaching the crop after it is cut?

A. The practice is that there must be sufficient reserve for the payment of land revenue. A sufficient amount must be left out for that purpose.

Q. Where is that rule?

A. The revenue officers say that the demands of the Government ought to be given preference.

Q. I think I am right in assuming that both this year and last year crops were heavy and the harvest was rich. Is there any difficulty in the decree-holder going to the village and saying "I attach half of the crop on the threshing floor and leave the other half"? I think the remaining half is quite sufficient for the purposes of paying land revenue. Well this method is never used, I understand. I take it that there must be some obstacle which I have not been able to find out. Are they afraid of the proprietors?

A. The thing is that the money-lending class is generally bania class and they are very much afraid of agriculturists.

Q. But surely it is possible to attach half the crop. Are they afraid of murder?

A. That is the main reason why this method is not adopted.

Q. There are many civil court peons, cannot they go and attach the crops standing on the threshing floor? Are they also afraid?

A. They would not go to the village at the risk of their own lives for the benefit of the decree-holder. He would not go unless there is some one to point out the field to him. He would say he could not find the field and that there was no one to show it to him. If the peon will go alone, then he will receive Rs. 5 or so and make a report that he could not find out the field.

Q. Something should be done in this direction. It is not a trifling matter. I know that in Bundelkhand a decree-holder was actually killed in attempting to gain possession of the property.

A. Yes, I myself know some cases in which lives have been lost.

Q. The point is whether we can devise some means or suggestion for the protection of the decree-holder?

A. The Local Government shall have to be approached to modify the rules under which they exempted certain standing crops.

Q. If a private decree-holder wants to gain possession of the property there will be resistence, but if the Deputy Commissioner or the Collector wants to take possession of some property then there is no resistence at all, on the other hand the work is made easier.

A. Yes.

Lieutenant-Colonel Rqe.—*Q*. What system of training would you suggest in order that you may get these officers properly qualified? You say later on that practically all the appointments should be by competition. How would you make them qualify?

A. I have suggested in my note that they should undergo training for a period of at least three years.

Q. Should there be lectures? Should there be a law lecturer in Lahore?

A. I said that he should sit with a senior sub-judge or any officer selected by the district judge and note the working of cases and how cases are proceeded with. He would pick up some knowledge which would enable him to start on with cases and with experience he would learn more and more.

Q. Should they sit up on the bench. They sit up there and it was found not of much use. Government is very short of officers and you are taking officers from their regular duty to sit in the court of a senior subordinate judge. Surely when he has sat there for a week he has learnt the procedure. After that it is a question of studying the law.

A. Well you can curtail the period.

Q. Don't you think now-a-days if assistant commissioners were appointed public prosecutors, it would do some good? I was appointed as public prosecutor from an assistant commissioner. I learnt more during the trial of one case than I would if I actually tried the case, because a public prosecutor has to meet all sorts of objections.

A. But may I enquire at what year of service you did that.

Q. After 3 years' service.

A. You had three years' service and had some experience. For an entirely new man it would be difficult. Your experience must show that passing the departmental examination does not mean much.

Q. You get powers when you pass. Then you become a first-class magistrate.

A. An intelligent man would of course pick up considerable knowledge of law and procedure in three years and would be able to conduct cases without extraneous help. But the question is to train them at the start. It is not to train them after they have been in service two or three years. That is altogether different from asking them to conduct a case after three years' service.

Q. I take it you mean by a judicial officer, a sub-judge?

A. Yes.

Q. You do not mean to say that he goes on judicial training as he goes on revenue training?

A. This training refers to the training which is to be given to a recruit before he commences actual judicial work.

Q. Not in the course of the work?

A. No.

Q. You say that practically all the appointments have to be made by competitive examination.

A. Yes. That is my suggestion. At any rate I would press that competition should not be altogether abolished.

Q. It is not altogether abolished.

A. It has been altogether abolished. Sub-judges, I may be permitted to say, under the new rules are not appointed by competition at all. Competition now exists with regard to the appointment of Assistant Commissioners. Previously under the old style some of them were appointed by competition. Since the new rules have come into force, competition has been done away with.

Mr. Justice Stuart.—*Q*. Under the new rules, no appointments have been made yet?

A. No.

Lt.-Col. Roe.—There will be no more competitive examination at all.

A. No. Your experience will show that recruits who have been taken by competition are as a class much speedier.

Q. I am not with you there. I know about one man who was recruited by competition.

A. I don't say that of all competition-wallas. As a class if you take 10 competition-wallas and 10 nominated ones, I think you will agree with me.

Q. You can hardly expect me to agree. I have been nominated myself and I did not pass any examination.

A. That has now become time-barred.

Q. You suggest that the powers of selected district judges should be enhanced to Rs. 7,500 and that it would lead to more speedy and less costly justice. You are aware of the proceedings of the Legislative Council and you still think it should be enhanced in spite of the fact that there is not much chance of having it passed in the Council.

A. The Legislative Council in my opinion has done a wrong thing in throwing it out. The value of property has gone up considerably and property which was worth Rs. 5,000 about which appeals could be heard by the district judge is now worth more than Rs. 10,000.

Q. The Lahore Bar will prevent that happening, because they would like to have all the appeals to go to the High Court.

A. That is probably true.

Q. You say that selected senior sub-judges should be given summary powers under Section 128 of the Civil Procedure Code for the value of Rs. 1,000 in certain classes of suits. Don't you think that the suggestion would be met if every sub-judge has ordinary small cause powers up to Rs. 500?

A. Yes.

Q. That could enable him to dispose of a number of petty suits which at present are nominally tried as ordinary cases.

A. I agree with that suggestion.

Q. Do you think it will be a good suggestion?

A. Yes.

Q. You are against sub-registrars being invested with small cause powers?

A. Yes.

Q. You say that there is a considerable quantity of unnecessary and avoidable oral evidence let in. That is perfectly true. You suggest that the courts may be empowered to refuse to summon any witnesses whose evidence, they could say, is unnecessary for the decision of the case. Does it not require an amendment of the law, because at the present moment they may summon any witnesses they like and there is no discretion given to a court?

A. Yes.

Q. You suggest an amendment of the law?

A. Yes.

Q. If the law is amended then there would be considerable difficulty because it may be contended on appeal that a relevant witness was not produced. In Criminal Courts, the court need not summon a witness if in the opinion of the court it is meant to delay the case and can make the accused deposit the expenses.

A. Similar powers may be given to civil courts.

Q. You think that, if the court considers a witness as irrelevant, it need not summon him at all.

A. Yes.

Q. You would impose punitive costs for summoning unnecessary witnesses.

A. Yes.

Q. You are against any time limit being placed for examination and cross-examination of a witness. I suppose it would be impracticable. One witness might be examined in 2 minutes and the other witness may take 2 hours.

A. Yes.

Q. As regards the question of minors, you think that the present law which says that a minor must be served is quite unnecessary and it is quite sufficient for a guardian to be appointed and for him to be served.

A. Yes.

Q. You don't think that the guardian, if he is a nazir, takes any interest in the case. There has been a suggestion that there should be a guardian provided none of the relatives of the minor act. Would that meet with your approval?

A. The present practice is in some courts to appoint an official. If the relations of the minor refuse to act as guardian, surely the court has to appoint some one as guardian to proceed with the case?

Q. There should be a sort of a public guardian in each district, say the Government pleader is appointed as a guardian.

A. I do not think that will improve the matter.

Q. There was a suggestion that when a minor came of age he should be given one year in which to enforce his claim. At the present moment the period is three years. Are you in favour of reducing the period to one year?

A. I have nothing to say against that.

Q. Then the next question is the limitation on execution of decrees. The suggestion is to reduce the limit from 12 years to 6 years. Are you in favour of that?

A. No.

Q. You think that up to 12 years the decree-holder should be allowed to apply for execution of his decree at any time and that steps in aid of execution every three years should be abolished.

A. Yes. It has been interpreted in favour of the judgment-debtor rather than in favour of the decree-holder and the result is that the decree-holder suffers on that account.

Q. I do not know; surely when you say in favour of one or the other it is interpreted according to the law.

A. What I submit is that the sympathies of the court should be with the decree-holder and not with the judgment-debtor.

Chairman.—Some judges have got the reputation of being plaintiff's men and some for being the defendant's men. It is an ideal thing if the Judge is clear of both.

A. Certainly. What I submit is that when there is no such conflict involved the court is bound to execute the decree and realise the money. Sympathy should not override the provision of law.

Lt.-Col. Roe.—*Q*. Then we come to the question of Order 21, Rule 26, about interim stay of execution. You are in favour of a suggestion that there should be no interim stay in money decrees.

A. Yes.

Q. Do you not think that it would be a good thing in money decree if the judgment-debtor should be made to deposit the decretal amount which should not be returned to him till the decision is given?

A. That is what I do in some cases.

Q. The judgment-debtor would say that the amount he deposited was not for the whole of the decretal amount but only for the appearance of the man in the court.

A. It is very difficult to recover money. When steps for the recovery of money are taken he pretends to be poorer than the decree-holder.

Q. There is so much trouble that the security section is useless practically.

A. I think so.

Q. You are in favour of abolishing the preliminary decree.

A. Yes, in mortgage cases.

Q. The decree should be the final decree and time fixed for payment of money. If money is not paid the decree should be executed.

A. Yes.

Q. In fact the preliminary decree in your opinion is useless.

A. Yes, entirely useless.

Q. And there is no gain to have a separate personal decree. The ordinary decree should contain a provision that if the mortgage property is not sufficient the judgment-debtor should be proceeded against. Is that your opinion?

A. Yes, that is my opinion.

Q. Then you have made a certain remark on insolvency proceedings. You say that unscrupulous judgment-debtors take undue advantage of the provision of the insolvency law for the purpose of avoiding the execution of decrees against them. You think that most of the cases are simply fraudulent. When the Act was first passed there was a provision that if a man had to pay five hundred rupees he was insolvent.

A. Under the old Act the judgment-debtor who owed five hundred rupees had to come to the court and the court had no alternative but to adjudicate him insolvent. Under the new Act the things are little but not very much better.

Q. He puts in a list of articles, cooking utensils valued Rs. 7-12, and liabilities five thousand, but in the village you will find him living comfortably.

A. Yes, he finds money to engage counsel.

Q. Can you suggest any method of improving that? You say that this insolvency law is very unsatisfactory?

A. The insolvency law causes more hardship in case of applicants who are agriculturists.

Q. That is hardship to the decree-holder?

A. Yes, to the decree-holder.

Q. There is no particular suggestion which you wish to make with a view to making the insolvency law simpler?

A. I have no further suggestion to make in the case of debtors who are not agriculturists.

Q. You make a suggestion that the law of evidence should be altered so as to raise a presumption in favour of the genuineness and due execution of all registered documents.

A. In pre-emption cases where the market value of land has to be proved these documents according to the law, I understand, have to be proved by examining at least one attesting witness. My suggestion in this connection is that if a registered document is put in it may be presumed that the document was duly executed and that its contents are correct.

Q. Are you referring to all the documents which are produced for the purpose of evidence only?

A. I am referring to them for the purpose of evidence only.

Chairman.—The fact of registration of a document in no way shows that the person who executed it knew of it. Does it?

A. He has to appear before a sub-registrar and there admit to have executed it and the sub-registrar satisfies himself that the executant is known to him or he has been identified by persons who are known to him.

Q. Do you think that is sufficient to prevent personation?

A. Yes.

Q. Then your last suggestion is that the customary law should be codified? Perhaps you know that in many districts among Arains daughter's sons are generally given preference to sons?

A. Custom differs among various tribes. Custom followed in central districts of the Punjab is not followed in the western districts. The law found among agriculturists in western districts is not followed in the central districts. In the western districts family relations have better right under the customary law than they have in the central districts. Moreover in places like Muzzafargarh agriculturists have got larger powers of alienation than Jats in the Central districts.

Bakhshi Tek Chand.—*Q*. You say that the customary law in central districts is not the same as the customary law in Multan? Now do you want to have one rigid custom for all the Jats?

A. I do not say that there should be one rigid code of custom. Of course I know that it will be very difficult to codify the customary law and not satisfactory, but I think if it is codified it will remove considerable litigation.

Lt.-Col. Roe.—*Q*. Do you not think that the customary law in the Punjab changes according to the wishes of the people and moulded according to the idiosyncracies of certain judges of the High Court? About 25 years ago there was agnatic succession and it was so strong that it was followed in general but now followed in districts only.

A. I think you are right.

Q. And do you not think that some of the rights of sons were greatly modified in favour of daughters?

A. Yes. Now agnatic succession is not in such full swing as it used to be. My opinion is that it will be desirable to codify the customary law, but I do not of course press the point. There will, no doubt, be difficulty.

Sir T. Desika Achariyar.—*Q.* With regard to customary law do you think that a large amount of oral evidence has to be let in because customary law is not codified?

A. Yes.

Q. And that witnesses are examined in large numbers from different districts?

A. Yes.

Q. And that one fruitful source of delay is due to the uncertainty of customary law?

A. That is a fact.

Q. My idea is that some branches at least of the customary law may be codified with advantage.

A. Yes.

Q. Is it a fact that every branch of law in this province is supposed to be governed by custom?

A. Among agriculturists custom is presumed to be the primary law.

Q. A register of customs has already been prepared and something may be done in the same direction in order to minimise litigation?

A. Yes.

Q. It may not be possible perhaps to do it completely, but an attempt may be made in order to minimise litigation?

A. Yes.

Q. With regard to the Transfer of Property Act, do you think that it is a correct statement of law that you can in this province transfer any property of any value without a document?

A. Yes.

Q. Would you welcome the Transfer of Property Act being introduced in this province?

A. No. There is one suggestion only that under the Transfer of Property Act it is necessary that a mortgage deed should be attested whereas it is not necessary in the case of a sale deed. It should not be necessary to attest a mortgage deed by witnesses.

Q. I am asking you whether it will not be advisable to have the Transfer of Property Act introduced in this province?

A. I think that some of the provisions of the Transfer of Property Act are so technical that at the present stage it would work some hardship.

Q. Supposing we take away chapter 2, would you introduce the rest of the Act?

A. The principles are already acted upon.

Q. With regard to honorary agency for the disposal of cases, do you agree that the present establishment of subordinate judges is not in a position to cope with the work?

A. As regards the present situation, the number of institutions is not large, but if there were an abnormal rise in institutions it would be necessary to appoint additional sub-judges.

Q. I am told there are about 25 per cent. of sub-judges whom it is desirable to have removed.

A. There are some sub-judges who are corrupt.

Q. If proper men are selected, do you think that the existing cadre is enough to cope with the work?

A. Yes.'

Q. Apart from that what do you think of village panchayats? Do you think that it would be possible to get cases disposed of more quickly if village panchayats are invested with powers to decide petty cases?

A. I am not in favour of that, because my experience shows that in villages there are factions and it would be very difficult to constitute village courts which would inspire confidence. The Panchayat Act was enforced in some districts and it has practically remained a dead letter.

Q. Have any panchayats been formed?

A. In some districts panchayats were formed, but people do not take very many cases to these panchayats.

Q. What is the cause of faction in villages? Is it due to the Hindu-Muhammadan trouble?

A. There are big zamindars and they are always at daggers-drawn; money-lenders and zamindars are against each other and money-lenders would not have confidence in panchayats because majority of panches would be zamindars or agriculturists.

Q. Your idea is that most of the suits are money suits, and money-lenders would not like to go to panchayats?

A. Because the majority would be that of zamindars and they are against each other.

Q. And therefore the object for which these panchayats have been constituted will be frustrated?

A. Yes.

Q. Is it not possible to do something for having an agency which should prevent our people from spending a lot of money on petty litigation of the value of Rs. 10 or Rs. 20?

A. It should be very desirable if such a scheme could be devised.

Q. With your experience, could you suggest any such scheme?

A. I don't think with the present mentality of the village people I could suggest any such scheme.

Q. Could honorary subordinate judges be employed?

A. It is very difficult to get suitable men.

Q. Have you tried?

A. We have got some honorary civil judges, they are far from satisfactory.

Q. So that is again an experiment which you are not likely to encourage, or you think would not be of any use?

A. Yes.

Q. There is another point which was brought out in examination by Colonel Roe in regard to agricultural lands. Your point is that an agricultural caste has been created in this province by statute and that caste is receiving additions from time to time.

A. Yes.

Q. What is your suggestion? Do you want the Land Alienation Act abolished?

A. I only suggest that the civil courts should be able to execute their decree in an effective manner and give the decree-holder the fruits of his decree.

Q. With reference to leases of property for 20 years, you think that civil courts must be allowed to execute them without the intervention of the Collector.

A. Yes.

Q. Is it a fact that people who are very well off are in a position to say to the decree-holder "Well, I won't give you any money."

A. Yes.

Q. Is it a fact that an agriculturist could file an application for insolvency notwithstanding he has, say, 500 acres of land?

A. Under the old law it was possible. The new law has given discretion to courts and if they find that the object of the applicant is to abuse the law, they can refuse to adjudicate him as an insolvent.

Q. The powers are not exercised by the district judge?

A. Yes. Your suggestion about the modification of the Land Alienation Act and the suggestion made by the learned President on the policy of Government, I may submit here, are correct. But so far as my experience goes, the agriculturists whose lands cannot be alienated have not been gainers. The alienation of land has not decreased. On the other hand instead of alienation being made to non-agricultural classes, the alienation is made in favour of agricultural classes, so the result is that the bigger fish eats the smaller fish.

Mr. Justice Stuart.—*Q*. But then the land is kept among agricultural classes. You keep the land in the hands of a productive agriculturist instead of an unproductive non-agriculturist?

A. In the case of agriculturist decree-holders, the fear of violence does not exist.

Q. Having regard to your remarks, the present law enables the transfer of agricultural land to another person who by statute is called a member of an agricultural tribe, but he may be a district judge like yourself?

A. Yes.

Q. There are many people who are employed in other places and who have nothing to do with agriculture at all, but to whom the land could be sold and not to the decree-holder?

A. That is a fact. I may go still further and say that the big landholders as a rule are as bad as the money-lenders themselves. They do not cultivate the lands. They live in cities and appoint others to look after the lands.

Q. After all the relief that was intended by the policy of the statute is not really enjoyed by the agriculturists. As it is the small land-holders are being devoured by the big land-holders. I have been talking to many people and this is the impression produced on my mind.

A. That is correct. Then in this connection I would like to make another submission, *i.e.*, not only relief has not been granted to the poor zamindar to the extent which it was meant, but in some cases he is a sufferer because if he is allowed to sell land to a person belonging to non-agricultural class, he would be able to get more price than if he sold to an agricultural member.

Q. I was going to ask you as to whether these agricultural tribes are in the majority Muhammadans?

A. Yes. Of course the agricultural tribes among the Hindus are Jats and Rajputs. The majority of the agricultural class is Muhammadans.

Dr. DeSouza.—*Q*. I see a new principle is introduced by the Punjab Civil Courts Act. Before an appeal is allowed in the High Court on a question of custom, there should be a certificate issued by the appellate court—generally a district judge, and sometimes I take it even a first class subordinate judge—saying that the question is one of sufficient public importance and that the evidence is so conflicting that a second appeal is desirable. How does this principle of obtaining a certificate of leave work? Are such applications granted as a matter of course?

A. No. Applications are made and they are granted in some cases where the appellate court honestly believes that the case should go to a High Court in order that authoritative decision might be arrived at.

Q. But in the majority of cases such applications are rejected?

A. Yes.

Q. Is there any application for revision filed in the High Court?

A. No, it is not allowed.

Q. So that this principle of obtaining leave to appeal, cuts down a large number of second appeals to the High Court on questions of custom. Is it generally satisfactory?

A. I don't think it causes any real hardship.

Q. Nor any dissatisfaction either with the Bar or litigants?

A. No.

Q. Seeing that a large number of frivolous appeals are filed in the High Court would you be in favour of applying the same principle for obtaining leave to appeal before applying to the High Court?

A. Even on questions of law?

Q. Naturally, appeals filed in the High Court are on questions of law only?

A. In that case the High Court may be empowered to inflict exemplary costs.

Q. Would you be in favour of extending the principle of leave?

A. No.

Q. You would not be in favour of extending the principle of granting leave to appeal?

A. No.

Q. Yesterday during the course of the evidence one of the sub-judges told us that the system of a central nazarat has proved unsatisfactory and recently within the last 2 or 3 months the work is going on of decentralising the nazarat and allowing each sub-judge his own staff of process-servers. Is that so?

A. Yes. The High Court have issued instructions on that point. I submit that the scheme would not work satisfactorily with the staff available at present.

Q. What exactly are the reasons that led the High Court to alter the system of central nazarat?

A. I think it was represented to the High Court that the work of the process-servers was very bad and that the sub-judges had no power to punish the process-servers for faulty work done by them.

Q. The result has been that a certain number of process-servers are now placed under each sub-judge.

A. In some districts that has not been done. I have reported to the Hon'ble Judges that with the number of process-servers at my disposal I am unable to try this scheme.

Q. Now, the representations of the sub-judges were that they had no control over the process-servers, that they were therefore unable to supervise their work efficiently and that representation has been accepted by the High Court and they are considering the question of decentralisation. Am I right in saying so?

A. Yes.

Q. Some district judges like yourself still maintain that the central nazarat system is superior to the decentralisation system.

A. Yes, with the present staff.

Q. What do you think about the efficiency of the work? Is there justification for the sub-judge's complaint that they have no control over the process-servers?

A. There is force in that complaint.

Q. Why should there be any force in that complaint?

A. I have already submitted in answer to questions by Colonel Roe that the complaints are made under the present rules to the senior sub-judge and that they are unable to punish the process-servers for their faulty work.

Q. You are in charge of a very important district. How many process-servers have you got?

A. I am in charge of Gujranwala and Gujrat districts. In Gujranwala the number of process-servers is about 70. About 30 are at Sadar and the remaining in outlying districts. In the Gujrat district the number of process-servers is 60.

Q. In the last year how many instances of punishment of process-servers have come to your notice?

A. Not many.

Q. What is the sort of punishment?

A. For ordinary offences fines are imposed. If the offences are more serious, suspension for a month or so and in very rare cases dismissal.

Q. Were there any cases of dismissal during the last year?

A. Only one case in Gujranwala.

Q. Any cases of suspension?

A. A couple of cases.

Q. Several cases of fine?

A. Yes.

Q. Any cases of criminal prosecution of process-servers?

A. No.

Q. The evidence of almost every witness is that the probable cause of delay is the bad work done by process-servers and all sorts of allegations are made against them. Don't you consider that if one or two deterrent examples are made now and again, it would reduce this sort of wholesale corruption and wholesale allegations being made against them?

A. It would be very difficult to bring home the charges and to get sufficient satisfactory evidence to satisfy a criminal court. Proceeding departmentally we go on moral probabilities and inflict fines or suspension. If the case is tried by a regular court I think it would be very difficult to obtain evidence to satisfy a criminal court.

Q. Do the appellate authorities interfere with the fines or penalties you impose upon the process-servers?

A. Very seldom. Practically there are no appeals preferred against sentence of fines. In the case of suspension also, so far as I remember, it is very rarely that the district judges interfere.

Q. Another cause of delay that has been brought to the notice of the Committee in this province is that witnesses do not attend courts in obedience to the summons, though duly served. Is that not so?

A. In some cases that happens.

Q. In such cases of disobedience what action do the courts take against him?

A. Generally they issue a bailable warrant and in some cases they proceed also in accordance with the penal provisions of the Civil Procedure Code.

Q. Is frequent resort had to the penal provisions of the Civil Procedure Code?

A. Only coercive process is issued as a rule. The penal provisions are not generally enforced.

Q. In your court in the last year either by way of appeal or on the side of revisional jurisdiction how many cases did you dispose of by penal action being taken for disobedience of summons to attend court?

A. I had very little original work.

Q. As a district judge, the appeal would come to you from the original court.

A. Yes. I had only one case.

Q. Have you heard of any other penal action being taken against them?

A. No.

Q. In these two districts in the whole of one year, you have just taken penal action against only one man.

A. Yes, to my knowledge.

Q. What penal action was taken against him?

A. It was a fine of twenty-five rupees.

Q. I suppose you confirmed the fine.

A. I do not remember because the case was not of much importance.

Q. But it looks that public has a general impression that they can disregard the process of the court with impunity. They pay more care to the process of the criminal court because they know the disobedience of their process would entail far more serious consequences than the disobedience of the processes of the civil court.

A. Yes, that is a fact.

Q. If the civil court wielded their power a little more vigorously do you not think to some extent the complaint about delay would be avoided?

A. There would be some improvement.

Q. It is because our civil courts are unwilling to take any penal action that there is some delay, laxity or want of expedition. Is'nt that your opinion?

A. Yes.

Chairman.—I understand that under section 36 of the Punjab Courts Act, 1918, the civil courts can fine a process-server up to a month's salary. They have to refer the matter to the district court only when the question is about suspension or removal. The court has got the power under the Act to punish a process-server.

A. This refers to ministerial officers under that court. It does not refer to the process-serving agency because it is not under that court.

Q. That is the process-serving peon is not regarded as a ministerial staff of that court.

A. Yes.

Q. Would it not put the matter right if it is added that the process-server may be included in the ministerial staff?

A. I have already suggested that the sub-judge may be empowered to punish the process-server.

The Hon'ble Mr. Justice A. B. BROADWAY, Judge, High Court, called and examined on Friday, the 11th April 1924.

(*No Written Statement received*.)

Chairman.—*Q*. Mr. Justice Broadway, I think you have known the courts of this province for good many years?

A. Since 1895.

Q. Could you tell us in your own way anything that might have occurred to you as regards the causes of legal delays in this province? What is your chief difficulty in this province?

A. The main difficulty is that of process-serving agency and secondly adjournments to a large extent which are unnecessary from the public point of view but from the bar point of view they say they are very useful.

Q. Now as regards the process-serving agency in particular, what is your difficulty? Is it due to corruption?

A. Yes.

Q. As regards the question of corruption one has, I think, to look first of all to the question of pay and then to the question of supervision?

A. Yes.

Q. Do you know what pay an ordinary process-server gets?

A. I do not know, but I can say that their pay has recently been considerably increased. They used to get Rs. 8 or Rs. 10, but now they are getting Rs. 17.

Q. I understand that apart from process-servers, there are also people who are called bailiffs?

A. Yes, but they are found in cantonments only. They generally deal with service on European people and things of that kind. There is a *nazir* also to whom processes are sent in the first instance. The process-serving establishment is under him. He generally waits for some time to collect processes for servers going in one direction and sends only one man to save the trouble and time taken by sending separate men with separate processes bound for the same direction.

Q. Have you, I do not know whether you have or not, ever had any opportunity of coming in touch with the *nazir* in particular?

A. No.

Q. What is your opinion about *nazirs?* Do you think that they are right sort of men?

A. I think an inspecting judge will be better able to tell you that.

Q. As far as corruption is concerned do you think that *nazir* is also corrupt?

A. I cannot say that. I should put it down more to the individual peon.

Q. When a case of corruption comes before you, do you find that it is a case of the defendant giving the peon so much to return the thing unserved or of the plaintiff giving so much money to return the thing served without service being effected at all?

A. I am speaking from my own experience. I have heard cases where the man has been deliberately bribed by the plaintiff to say that service has been effected while he has never been to the place of the man on whom it was intended to be served. It is only in order to get an *ex parte* order. There are also cases of the other kind, *i.e.*, the peon would say that the man had gone out and was not in his village while in fact he had gone out for a walk. But I think cases of the former kind are far more than cases of the second kind.

Q. On account of the difficulty of effecting service, do you get good many applications to set aside *ex parte* decrees?

A. Yes.

Q. If these are numerous, I think, they are either due to service not having been effected or service having been defective?

A. Yes.

Q. Have you ever had time to think that the rules as regards service of summons might be made more workable?

A. My own idea is that the litigant should be made responsible for the appearance of his witnesses. If you have that system, I think there will be less *ex parte* orders and there will be less questions of corruption. I would leave the process-serving establishment as it is, but the man should take the assistance of the court only in that case where he cannot take the help of his counsel or vakil. He should be entitled to go to court for assistance provided he comes to court in a reasonable time before hearing.

Q. That is to say, the parties should be left at liberty to serve their own summons?

A. Yes, he should get an order of the court that the plaint has been admitted and a notice issued to the other side. He should then take out his own summonses and serve them through his pleader or counsel, just as it is done in England. The plaintiff takes out the summonses and sends it to his barrister or pleader as the case may be and he charges something from Rs. 32 to Rs. 64. The same thing can be done through the vakil's clerk and sworn to before a magistrate of the first class. I do not think there will be any trouble with regard to that.

Q. Do you think that it would be practicable in outlying villages? Do you think that it would be possible to get service effected through pleaders on villagers who are most of them illiterate?

A. There will be some difficulty. In this province there is a local bar association in each district and this bar association to a very large extent regulates the personnel of clerks and if it finds that a particular clerk is of bad character then it asks the pleader or vakil concerned to dispense with his services as soon as possible. There is always a check on clerks.

Q. As regards the type of cases where the plaintiff wants to snatch an *ex parte* decree, I take it that occurs, when it occurs at all, in suits of short type and not in long type, *e.g.*, title, suits, etc.?

A. That is so.

Q. Under the Code as it stands at present, the duties of the peon seem to me to be a little heavier than he can be expected to do. If he does not find the man at his house, he has to take the trouble of finding out where the man is before affixing the summons on the door. As a matter of fact, no peon takes this trouble. Do you think that it should be considered as reasonable service, if the peon, failing to find the man, nails the summons on the door? Do you see any objection to that?

A. Yes. Personally I think that would encourage the man not to do anything more to find out whether the man is really in his village or not. He won't take any further trouble.

Q. Do you think that if the summons is nailed on the door or the peon goes to the village, the defendant will come to know that there is something against him?

A. Well I think if the peon goes to the village and does not find the man there he can go to the plaintiff himself. A thing like this will come to be known in the village very quickly and the defendant will at once come to know that something has happened between him and somebody else. But as there are so many illiterate persons in villages, they may not understand fully the nature of it.

Q. In practice if the peon goes to serve a summons in a village, does he go to the lambardar for assistance?

A. Yes, he goes either to the lambardar or the chowkidar.

Q. Do you think that there is anything to be done in the way of encouraging village officers on the spot to give assistance to the peon? Do you think that it could be made part of their duty if they were given a small fee out of the process fee?

A. Yes it will be beneficial, but I have never heard of that idea before. Are there any village officers in Bengal?

Q. No, there are no village officers in Bengal.

A. I think village officers there are called village munsifs.

Q. No village munsifs are found in Madras. Do you think that the adoption of this system would improve matters?

A. Yes.

Q. I think the patwari seems to be the instigator of litigation in this province.

A. Yes. He has a reputation for it.

Q. It is generally supposed that any litigation between villagers is generally instigated by patwaris?

A. I should say that in most of the land suits nobody would go into litigation unless the patwari is consulted as to what chances of success there are.

Q. For these reasons you think that a patwari is not a good person to be trusted.

A. Yes. If you use a lambardar he ought to get some remuneration for it.

Q. As regards the witnesses, I understand that the real trouble in Punjab is the people turning up and saying "One of my witnesses has not obeyed the summons and I want an adjournment." Is that so?

A. Yes. That, to a large extent, is also due to the Bar. And again the Bar to a certain extent cannot help itself because the procedure that has been carried out is the court procedure.

Q. The Code lays down that when issues had been settled and a date is fixed the case should be tried from day to day.

A. That is practically never done. If they have got 50 witnesses it is usually arranged to have 5 or 6 witnesses examined each day and thus 6 witnesses are examined in each case. That suits the Bar. Therefore, they do not complain.

Q. Of course in a case where 50 witnesses have to be examined there may be a difficulty. Take the ordinary work of a sub-judge. There must be a lot of new little work that could be disposed of in 5 minutes and the parties in those cases are very often sent away.

A. That could be remedied by fixing hours for each case.

Q. As regards the witnesses, it is in the power of court to order attachment of property or issue a warrant of arrest if a witness has not obeyed the summons. Do you find as a matter of fact that the courts exercise those powers or do they simply give an adjournment hoping that he will turn up if a summons is taken a second time?

A. The power to issue warrants is very very rarely used and there is a reason for that. Firstly, unless the man calling a witness pays the necessary fees, though the courts may pass an order, it cannot be carried out. Secondly, as a rule the courts don't know and can't know whether a witness is important or not. The counsel says he is important. The court naturally accepts that statement. But afterwards it may turn out to be nothing at all.

Q. Now I suppose that there is a great deal of time wasted on the supposition that a man is going to call a hostile witness who is not willing to appear.

A. Yes.

Q. When a witness does not turn up does he usually postpone the case or go on with the witnesses that are present?

A. My experience is that counsel used to say that all the witnesses should be heard on the same day and the witnesses who are present used to go away.

Q. Don't you think that something might be done to stop that?

A. They may insist on examining the witnesses that are present. But the other side states that the other witnesses are kept back in order to fill in any gaps that may occur during the cross-examination of the witnesses.

Q. When a witness does not turn up I take it that what usually happens is that the case is adjourned and the man is given some time to deposit the process fee for another summons.

A. Yes.

Q. How long is he usually given?

A. A week or 10 days. It all depends upon as to how far the parties are from the headquarters.

Q. When a witness does not turn up a second time, is it common to give a third adjournment?

A. Yes even fourth if necessary.

Q. Though the court was ready to try the case?

A. As a rule when a process is returned unserved, the peon generally says that he has gone away or that he could not be found in that address. The court will tell the counsel or the litigant that correct particulars should be given.

Q. That seems to be a little hard. Because he has not given correct particulars, his opponent would have to put up with an adjournment. It might very well be that he might come to the end of his tether.

A. Personally I think that would be the case.

Q. It may be that a witness is wandering throughout the country and he could not be found. Is the court to postpone a case until he is found?

A. That ought not to be done.

Q. Generally speaking on this part of the case would you be in favour of strengthening the hands of the lower court and doing something to say that if they did not grant adjournments for this reason they would be backed up by the High Court and do you think it would be an improvement?

A. Undoubtedly.

Q. In fact the thing wants a tighter grip.

A. If it is made compulsory instead of discretionary, it will certainly be better. It might create hardship now and then. In a majority of cases I think it would do good.

Q. Do you think that the ordinary practice might be that the parties should be expected to summon their own witnesses; that is to say, to hand over the process to the party and ask him to go and serve it. In ordinary cases plaintiff's witnesses are people whom the plaintiff knows and he will be able to have them served better than the court peon.

A. Yes. But in the cross-examination of witnesses, questions are asked as to whether they received a summons in order to show that they are biased in favour of the plaintiff.

Q. It also obtains in Bengal. There does not seem to be any sense in it. I don't know why this idea is prevalent, that unless a man is really in favour of or friendly towards his particular client, he is not going to come and give evidence.

A. There is a certain amount of trouble. He has to come from his village from a long distance, cannot attend to his work for some days and has to come 2 or 3 times to court.

Q. As regards adjournments from day to day can you tell us which types of courts are congested in this province, that is to say, who have more work than they can do?

A. The principal civil courts and the senior sub-judge's courts.

Q. I understand that not many people in this province are entrusted with small cause powers above Rs. 250. Is that so?

A. I think it is right.

Q. If the higher courts are congested I take it that the trial of more cases under small cause court procedure would lighten the work. Would you increase the small cause powers from 250 to 500?

A. Yes.

Q. In your experience does the sub-judge usually keep a diary?

A. He is supposed to keep a diary. The majority of them leave it to the reader. Of course there are exceptions.

Q. Then do you find that in the diary for the day, the subordinate judge, when he takes his seat in the morning, will find a tremendous number of cases, many of which he cannot possibly cope with?

A. Very often.

Q. Have you ever thought of any way out of it? Do you know that the High Court have laid down rules to prevent witnesses being summoned and re-summoned simply because far too much work is put down on a particular day?

A. Generally they give advice to the courts. If they do that part of the work intelligently and look a little ahead, there would be some improvement. The reply is—we put down 4 or 5 cases. We have been told that there is a heavy case and it is going to take the whole of the day. On that day they will put down 2 or 3 cases. Well something happens and that case goes down. They say—we have nothing else to do.

Q. In a case like that every judge should keep a margin of safety. Do you know whether they adopt the practice of long adjournments or do they go on more or less mechanically fixing a date?

A. I do not know what they are doing in recent years. Ordinarily a month or six weeks used to be the longest period.

Q. Do you think it would be practicable to abolish this system of working on the diary, *i.e.*, every case having a date on the diary? In the case of a judge who works on a congested file, I will put down such work for each day as he can hope to get through. I shall not give dates now. They should go to a *sine die* list and then when he gets within a month of hearing, some sort of notice shall go to a pleader and then a particular date will be given.

A. I am doubtful how far that would work. It would certainly be a good thing from the point of view of courts. Then comes the question of getting a case ready, the parties served, etc.

Q. I don't suggest this until the issues have been settled and the parties have been served and all those sort of things have been done.

A. That is to say, the case is ready for trial. Then I think it would require to lay down a rule that notice to counsel must be treated as equivalent notice to the party.

Q. Well, there will be no difficulty in cases where pleaders have appeared. In small cases or cases where the parties appear unrepresented, do you think there could be done something on the lines of the rules of the Allahabad High Court requiring each party to file a registered address, service at which should be good service whether it reached or not, and service at which should apply for execution and appeal? The party can change his address as often as he likes, but it is his business to inform the court of the change.

A. Well, that is on the same principle as is laid down in liquidation matters. I certainly think the above method is good, and would be beneficial.

Q. It might at any rate avoid unnecessary notices being issued to parties who have appeared?

A. Yes. But the party has to give the address.

Q. Of coure he must be first served and brought before the court.

A. Yes.

Q. Would you mind just telling us the method of control in the courts in this province? First of all do you find that issues are settled with some care or after examining the parties so as to minimise disputes?

A. Well, that depends on the individual incumbent of the court. Some men were undoubtedly good. They used to comply with the Code rigidly. The parties would be examined and then issues would be settled. Very often you would find in a big case the senior judge would invite the counsel to draw up the issues. That would be done sometimes and it would be accepted blindly.

Q. If the court knew its man that would probably be the better way of doing it?

A. I think on the whole I may say issues are settled by the majority of courts mostly knowing what they are doing. Here and there there are exceptions and of course we have been constantly bringing it to their notice. Very often individuals, especially the elder men neglect the rules as to examination of parties or their counsels, but we have done our best in that line and we have furnished them with a printed form which they are supposed to fill up and very often they do fill it up.

Q. One good method of minimising the issues is of course the use of the provisions of the Code as regards admission of facts and documents and interlocutory. Do you find in this province that these orders of the Code (X, XI and XII) are usually used?

A. Practically never. They may be starting now but we shall see the result three years later. During the last two or three years they have never been used. In fact nobody seems to understand them.

Q. Of course the law of discovery is a very special branch. I understand other provinces have prescribed these orders for the examination of the University for a degree (although there are exceptions), still they are never attended to, and that when people first qualify as mofussil pleaders they have no means at all of practically applying their theoretical knowledge.

A. There is no training indeed.

Q. In the same way I gather that when a person has taken his law degree he has no training whatever as to how to draw his pleadings.

A. None.

Q. In the same way he may be entirely innocent of how to handle evidence and of knowledge as to how to draft mortgage-deeds or to write opinions. Do you not think that something might be done to require students before the degree is obtained or finally before the man comes up as a legal practitioner to have some practical training? As far as I understand at present a person goes to the Bar having absolutely no chance of learning.

A. But would you bring that into the Civil Procedure Code?

Q. What I am suggesting is whether it should be done as a part of the University curriculum. I take it that in this country if a man has got certain things to study for examination and certain other things not for examination he invariably neglects the latter. You find that in the case of an Indian student who goes to England at a great expense, his father sends him there and takes a great deal of trouble to give him training in the Chambers but when he goes there he spends his whole time in attending lectures and passing examination and nothing else. Do you not think that something could be done by making practical training effective and if possible to put it as a part of the degree examination?

A. Certainly that would be beneficial. In fact my experience as an examiner of some of the law papers has been that while the student has explained what was in the Code, when you give him a problem he cannot do it. I particularly remember a case and I know that about seventy per cent. of the students could repeat a section in the Code word by word but in the problem when I asked them to apply the section I should say that only ten per cent. got it right.

Q. Of course it is quite easy to have a practical examination, to give a man certain facts and to tell him to draw pleadings.

A. Yes.

Q. In the High Court here, before a man becomes an advocate, do you give him an examination?

A. It is a sort of honour and a vakil is made an advocate after he has proved himself fit to be an advocate.

Q. Take a vakil of the Lahore High Court. A man who goes to practise as a youngster, does he do that on the strength of his degree?

A. So far as lower courts are concerned you enrol them merely on the strength of LL.B. degree with no practical knowledge, but if he wishes to come to the High Court he has to put in two years' practice in the lower court and a certificate from the sub-judge or the district judge that his work was satisfactory.

Q. But during the first two years when a man goes to the mofussil Bar he does not get much practice?

A. Yes, the majority of them get very little training. If he has got a friend in practice he helps him but there is no sucs thing as reading.

Q. But is this practice of being allowed to help somebody else carried out in fact?

A. Only in five per cent.

Q. I take it there may be fewer pleaders than used to be. They are still flooding the Bar.

A. Yes, the supply is greater than the demand.

Q. As far as that is concerned there is no reason why additional practical training should not be imposed?

A. None whatsoever.

Q. In the end it might not mean any greater wait.

A. I think you will find certain opposition from the Bar point of view because they want to see return on their principal.

Q. They want to earn money as soon as they begin practice.

A. Yes.

Mr. Justice Stuart.—There are in the United Provinces many pleaders who cannot earn even Rs. 20 after six years' practice.

A. Here in the Punjab also you can find many who cannot earn more than Rs. 40 per mensem. I have often found junior pleaders coming to the High Court and learning how cases are conducted there.

Colonel B. O. Roe.—Yes they go and sit there and enjoy as they enjoy the cinema or theatre.

Bakhshi Tek Chand.—They take it as *Tamasha.*

A. Yes, but it is a hopeful sign that they go to the High Court and learn something how cases are conducted by senior members of the bar.

Chairman.—Yes, I would take it as a good sign that they take interest in their work and go and attend higher courts.

A. Yes.

Q. In the same way as regards the system of recruiting judicial officers, I think, you have changed it. Do you insist upon the candidate having practice for any long time?

A. I speak open to correction. I think I am right in saying that the only qualification required is that the candidate has passed the B.A. and L.L.B. examinations.

Q. So you do not insist upon the candidate having any practice at all? Is the selection made by a committee of the Judges of the High Court?

A. Yes, but there is no condition that the man must have some years' practice.

Q. Is there any permanent committee for selecting candidates?

A. Candidates are selected by all the permanent Judges of the High Court. There is no regular committee.

Q. Are there any interviews, or are they taken in without undergoing any interview?

A. We have interviews. Supposing we have got a list of 100 candidates and there are five vacancies only. We select five men out of those 100 taking into consideration the question of age, because there is an age limit of 27 years. When we have decided to take these five men and that they are quite suitable, we then send for them and they appear before us.

Mr. Justice Stuart.—*Q*. And you do not give any interview to the other 95. I mean to say that after you have decided to take these five men you send for them only in order to see that they are not absolutely unsuitable?

A. Yes. As a matter of fact by the time a man is selected he has seen the majority of the Judges.

Q. Because he has been touting round?

A. Yes.

Q. In the United Provinces, if a man approaches a Judge, we at once strike him off the list. They may approach through the proper channel.

A. Well I find that it is generally members of the bar who approach the Judges. They approach with a request for one or other of their relatives.

Bakhshi Tek Chand.—But the application comes through the district judge of the district in which the applicant resides. Orders are sent to district judges to send up the applications of five or six candidates, as the case may be, and then they recommend or forward the applications of likely candidates.

A. Not now. We do not do that now.

Colonel B. O. Roe.—*Q*. Every man must have a certificate of the district judge before he gets his name enlisted?

A. But that does not mean anything. It shows that the candidate is a young man of good health. In some cases it means something more than that. If a judge recommends very strongly then he has to give reasons for doing so and the High Court Judges must respect his remarks.

Chairman.—*Q*. As regards the actual conduct of a case, do you think that it is opened as is done in England?

A. If you mean the formal procedure laid down in the Code, you may take it that it is never carried out.

Q. Well they are very good rules. Do you think they are followed by anybody here?

A. My brother judges may differ from me, but my experience is that they are not followed. We are trying now to make these rules have some effect.

Q. Well I think it may in some cases save time. In many cases, if the case is not opened properly, the plaintiff changes his case, changes his evidence and so on when he finds that facts are turning against him. If a case is opened properly then he has to disclose his hand and cannot make any attempt to change the evidence.

A. But the difficulty is that the case is heard not only by one judge but by about eight or nine judges. It would be very useful if the case was heard throughout by one judge alone and the judge, who has framed issues, decides it. But here in the Punjab you find so many transfers in the hot weather that it is impossible for one judge to finish a case himself. Several adjournments have to be given. There is no certainty whether the judge who has begun the case would also finish it.

Q. The advantage will be that if a case is opened properly by the plaintiff's counsel then there will be no chance for him of making a false statement or producing wrong facts because in that case the judge would have the record of everything and be able to find at the end whether he has given wrong facts.

A. The difficulty is that if you open a case properly, the plaintiff will open his case before one judge, the defendant will appear before another judge and issues will be framed by another judge altogether. In the hot weather you have a lot of institutions and cases are not generally heard to any appreciable extent by one judge. Judgment is sometimes written by quite a different man, who has neither framed issues nor heard the case at any preliminary stage.

Q. But do you not think that it would save time and unnecessary delay if the formalities as prescribed by the Code are followed?

A. Yes it would certainly save time.

Q. One further use of insisting on it would be that there would be a still further chance of narrowing the disputes when the issues have to be settled?

A. Yes.

Q. As regards commissions to examine pardanashin women, is that difficult with you? Does it take a long time to record evidence before the commissioners?

A. I am afraid I have not got much experience. There are not very many cases.

Q. In this province there is a mass of small litigation. As regards simple suits for money and movables the small cause court procedure is applied and the provisions of section 25 of the Small Cause Courts Act do not seem to be used very much. Do you get a mass of applications in revision in small cause court cases?

A. I do not get very many.

Q. The trouble is as regards suits of small value that are within the exceptions in the schedule to the Provincial Small Cause Courts Act, that is about a fifty rupees suit about a field, about a boundary dispute, about a strip of land one foot wide about a privy, which is a source of contest for some reason in Bengal, or disputes about easement. The plaint is first of all filed in a munsif's court or in a sub-judge's court. Then there is an appeal to the district judge or senior sub-judge. That court has not heard the witnesses. It is made final for some reason on questions of fact. Then there is a right of second appeal to the High Court. Then as it is a small case, that is probably done by one Judge with the result that there is a Letters Patent appeal. Both the second appeal and the Letters Patent appeal are heard once under Order XLI, Rule 11, before it is admitted. And, if there is a remand, it may amount to 6 or 10 appeals for this wretched business worth about Rs. 50. Don't you think that something could be done to give the small litigant one good appeal on fact and law and if he wants to appeal further stop him there? Don't you think that something of that sort is right in principle for the handling of the vast mass of small litigation?

A. Yes. I personally agree. But I think that that will meet with very considerable opposition because they have got this right of appeal and they will say that you are taking away the right. As you are saying that you are going to raise the qualifications of the judiciary as to render them to command the confidence of the public, if you do that, there could be no possible objection that I can see.

Q. Do you think that things are sufficiently advanced in this province that it would be possible to give a good appeal to people decided by men of the stamp of a senior sub-judge? Could you get such men in the province to-day?

A. Of course that is a matter of opinion. With regard to the qualifications of the judiciary at present I think it would be possible to get them. But it would increase the expense considerably.

Q. The expense might not be much because you would be able to save the salary of such High Court Judges as are devoting their time to second appeals and of district judges. In Bengal, for example, we have an enormous mass of second appeals that have passed the test under Order XLI, Rule 11, under Rs. 100 and the proposal that we have been thinking of is to have a first and final court of appeal only to cases under Rs. 1,000 leaving the present practice and the present right of second appeal applying in cases over Rs. 1,000. For small litigations that cannot be dealt with by the small cause court procedure, it would be a good thing to the country if one could give such a first appeal as would entitle one to make it final.

A. I certainly think it would be beneficial.

Q. What is your opinion of the qualifications of the senior sub-judges as they are to-day? Do they seem to do their work with reasonable satisfaction?

A. I think on the whole the average is not a very bad one.

Q. If you elect to give this work to the sub-judges, do you think it would be possible for the small work under a thousand rupees to be conveniently sent to this tribunal?

A. Yes. I think so.

Q. There would be an arrangement by which if they thought fit by reason of the difficulty or special importance on a point of law, to state the case to the High Court or if two of them differed, the High Court would have to take the thing. The suggestion is that all cases under Rs. 1,000 might be given a sort of shift to be dealt with by a Bench the personnel of which is to be by selection.

A. I see no objection.

Q. I quite appreciate that there are difficulties in connection with Suits Valuation Act. We have already got in this country a system of jurisdiction according to value. And whether or not the thing is worth a little more or a little less it fluctuates according to the purchasing power of the rupee to-day.

A. I agree that it would certainly be beneficial. At the same time there is this one thing to be said for the further appeals and that is when you get a case of larger value that is dealt with by a judge of greater experience, parties engage better counsel and the case is better argued. As often as not, the law on the subject is not in dispute. Almost all the first appeals are on questions of fact. When you get a case of small value it is exceedingly badly run by the courts below, and exceedingly badly handled by the Bar, and therefore to that extent I have always thought myself that the reasons why further appeals were given, were to meet that situation.

Q. Why should not senior sub-judges rectify the evil straightaway?

A. I think that is a thing to be taken into consideration.

Mr. Justice Stuart.—*Q.* Who are the inspecting judges here?

A. For the most part the civilian Judges in the Court. The Chief Justice goes out occasionally. I have not gone out myself.

Q. Does not the same man go out always on inspection?

A. No.

Q. Have you any system of English Judges here?

A. No.

Q. Whom does that work go to?

A. To the Chief Justice.

Q. My experience is that it would be utterly impossible for the Chief Justice in our province to undertake the duties of the English Judge.

A. I do not know what the exact duties of English Judges are in your province. Here the Chief Justice divides up the administrative part of the entire court and each of the permanent Judges is allowed a certain part of the work—for instance insolvency and guardianship cases, etc.

Q. Do you mean in your own Court?

A. In the province. The reports, the statements, etc., are all checked by him.

Q. What I want to know is who is keeping an eye upon a mythical person, say a subordinate judge in Gujranwala, in order to see whether that officer is an earnest worker who is doing his best or a slacker who is doing his worst?

A. That you may take it, the Chief Justice knows most of the work.

Q. That is the Chief Justice's work?

A. He does it.

Q. In my province it would be impossible for the Chief Justice to find time.

A. Here he finds time.

Q. With regard to corruption amongst your process-servers, may I take it as an axiom that there is not a single branch of the subordinate service in Punjab which is not corrupt?

A. I am not prepared to say that.

Q. Is the patwari corrupt?

A. He has that reputation.

Q. Is the canal chowkidar corrupt?

A. I do not know about that.

Q. Is the police man corrupt?

A. You mean as a service. Of course.

Q. I only want to show that the process-server is no worse than anybody else.

A. No.

Q. Now surely corruption has been made much less in certain branches of service and where it has diminished it has diminished by exercising efficient supervision. So that the remedy would appear to be better supervision. What the real fault of the system is that the *nazir* has neither got the character, nor the time, nor the habit to supervise the work of the process-server efficiently and what we want is a superior man in charge of the process-serving department, and don't you think such a system would improve matters considerably?

A. Yes.

Q. With regard to arrest of witnesses, don't you think something might be done by giving the court power to arrest for contempt? You are quite correct in saying that as the law stands at present it is left to the parties to coerce the witness. But the result is many witnesses treat the court process with contempt.

A. Quite true. But then the case of a witness who has been served but does not turn up is very rare.

Q. I am only speaking of men who have been served?

A. With regard to that there are very few who are actually served and do not come.

Q. It struck me that they really make it a practice of holding up a case indefinitely until all the witnesses are present by a very simple method, *i.e.*, by summoning a witness who does not exist. But that is a *reductio ad absurdum*.

A. Of course it is for the plaintiff to find out.

Q. Take an imaginary case Jaimal Singh, son of Mit Singh, who carries on business as a carpenter in Lahore. It is very difficult for the court to know if such a person exists.

A. It may be difficult but it is not impossible. You have got to give correct address.

Q. The last point I want to touch is as to whether the delays in the Punjab are really bad on a reasonable standard. One district judge was good enough to give me some figures. Here is a suit brought by a Muhammadan wife. She was a minor when she was married and she wanted to repudiate the marriage on attaining puberty. It was instituted on the 19th February 1923 and decided on the 14th January 1924.

A. That does not seem to be very bad.

Q. You have to take the final disposal of the case?

A. You mean in appeal.

Q. Yes. I find this appeal was heard after three months of institution.

A. But then you see that a particular district is constantly flooded by cases being sent to it from the other districts where there is a congestion. The work in our province is not evenly distributed. There are certain districts in which the pending file is extraordinarily small and there are other districts in which the pending file is extraordinarily large. We check the work every month and we send certain number of appeals from one district to another.

Q. Original suits?

A. No, appeals.

Q. I am talking of the original suits. I think your figures compare favourably with other provinces.

A. I am very glad to hear that. We thought that our province was bad. But I can give you a case, it was a fairly big case, in the trial of which it took three or four years and it took still over a year before it was completed and evidence recorded on both the sides. We could get no district judge to hear arguments. . . . .

Q. You mean that case was for trial by the district jugde?

A. Yes. The district judges owing to constant transfers could not hear arguments and we could not get it disposed of.

Q. We were discussing a class of case in which evidence spread over six days or I might call a staple case. Here is another case for breach of contract of piece-goods. The defendants set up the usual plea that they were not principals but that they were commission agents and so they were not responsible. I find that suit was instituted on the 24th October 1922 and decided on the 16th July 1923, which in some parts would be considered with great expedition. I want to say that cases in which there is delay are few and the general litigant has got very little to complain. Both in the United Provinces and the Punjab there is a delay in the hearing of appeals but the work in the original court is not bad. I think there is waste of time over appeals but the time taken for original suits is not very bad.

A. Yes.

Q. Take an average sub-judge. Do you find him to be a man with a very reasonable amount of commonsense and quite a fair working knowledge of law?

A. Undoubtedly.

Q. But after all does anyone want anything better?

A. In my opinion no.

Q. A man with a reasonable amount of commonsense and a fair working knowledge of law, is not that a very fair description of an average county court judge in England?

A. Yes. I have maintained that our judiciary will compare favourably with the judiciary in any other province.

Q. The question is whether we can entrust him with greater responsibility if they are men of that class?

A. Certainly you can do that.

Colonel Roe.—*Q.* The learned president was saying that when a man puts in a plea he should strictly confine himself to it. There was a judgment by Mr. Justice Clarke that in a backward province like the Punjab where the agriculturists were illiterate you should not confine the poor man to what he said at the start off. Well this is being acted upon a very good deal?

A. The time when that ruling was passed has passed. It is not the duty of the judge now to do the work of the clerk or the counsel or the litigant. It is for the litigant to place his case before us. In the High Court nobody would look at that ruling.

Q. Well as regards the amount of work turned out by subordinate judges, I think they have a lot of it? When his work is good he turns out a very small amount of work. If the quality of his work is nice he would devote a good deal of his time to deal with cases properly.

A. From the working of the various courts of subordinate judges, I think his work is good who turns out an adequate average. If he is really a good judge he must finish the work with reasonable quickness. He must keep up to the average mark. He must neither be slow nor quick, I mean too quick. He must turn out a fairly good number of cases per mensem.

Q. Well do you not think that one of the causes of delay is that proceedings are stayed very often by the High Court?

A. Yes the judges have realised this and we have been putting our faces against it.

Q. We have to stop proceedings sometimes for three months and sometimes for more. Once I was told to enquire into the conduct of a pleader of Jullundur and there were about 50 witnesses to be examined. The proceedings were stopped by the High Court and I had again to start the case after three months. I found nothing against the worthy gentleman who again went to the High Court. He was under the impression that I was greatly prejudiced against him. He got another order for suspending proceedings, but I had in the meanwhile written my judgment. I sent my order to the High Court saying what action I had taken.

A. It is quite possible that this application had the necessary effect.

The Hon'ble Mr. Justice MOTI SAGAR, Judge, High Court, Lahore, called and examined on Friday, the 11th April 1924.

(No Written Statement received.)

Sir T. Desika Achariyar.—*Q.* With regard to our Committee's work I want to take you through some points which seem to me to be peculiar to this province. I understand you served for some time in Delhi?

A. I did not serve, but I practised.

Q. For how long?

A. For 15 years.

Q. Therefore you will be in a position to tell us something about commercial cases. Are there many commercial cases in Delhi?

A. When I was there there were not many commercial cases.

Q. Did you feel during the course of your practice that for want of expert judges who could quickly dispose of commercial cases there was a good deal of delay?

A. There was no delay at all. I never heard that before this. When I left Delhi there were a large number of appeals, but I never heard that for want of an expert judge there was delay in these cases.

Q. Is there any real need for the appointment of trained judges who could dispose of commercial cases quickly?

A. I do not think so.

Q. Do you think that the ordinary subordinate judge is capable of disposing of these cases?

A. Yes.

Q. Do you think that he is able to dispose of these cases speedily and without all the dilatoriness which characterises trials in ordinary title suits?

A. Yes. As a matter of fact so far as Delhi is concerned I have found exceptionally clever men during the past three or four years. They try these cases in a very good manner. There are men like L. Som Nath and L. Jagan Nath.

Q. You are likely to find in the service people like Som Nath and Jagan Nath? Do you think it is possible to find men who could try these cases with great ease and without getting any training? Do you think it is possible to get other men like Som Nath and Jagan Nath?

A. I do not think there is any need of giving training to these judges.

Q. The second point which appears peculiar to this province is with regard to customary law. I understand the Punjab Laws Act makes custom the determining factor in almost anything connected with any breach of law. Is that so?

A. No, not with any branch of law, but section 5.

Q. Section 5 deals with succession, betrothal, marriage, divorce, guardianship, family relations, wills, legacies, gifts, partitions and so on, *i.e.*, almost every branch of law is regulated by custom?

A. Yes.

Q. With regard to this custom, is it a fact that there are numerous precedents upon almost every possible set of facts?

A. Yes, there are.

Q. And these precedents are about 5 on one side and 15 on the other side?

A. Yes.

Q. And this is responsible for a large amount of delay in the disposal of original suits?

A. Yes, I should think so.

Q. And so you like to have the law codified?

A. Yes.

Q. Do you think that there will be no practical difficulty in codifying the law?

A. Not much in the Punjab.

Q. Do you think that the number of suits in which questions of custom have to be decided is very large?

A. Yes.

Q. And do you think that some codification of the law relating to custom would tend to minimise delays and litigation?

A. Yes.

Q. One more point. I find from the civil statements of this province that there were about fifteen thousand applications for setting aside *ex-parte* decrees. What is the reason of this? Is it because judgment-debtors come after decree to have the decree set aside?

A. I do not know.

Q. So you are not in a position to tell us anything with regard to that?

A. No.

Q. Another point that seems to be peculiar to this province is with regard to delays in the execution of decrees. I am told that your Punlab Land Alienation Act is responsible for a good deal of delay in these matters?

A. Yes, it is to a considerable extent.

Q. Will you kindly tell the Committee what exactly is the cause of delay in these matters?

A. Supposing a man has got a decree against an agriculturist and he wants to execute it and attach land. Now that decree will have to be sent to the Collector which will take a very long time. Under the Land Alienation Act the land will not be liable to attachment. Revenue authorities do not look with sympathy on the execution of decrees in civil cases.

Q. Therefore it is not exactly a question of the procedure which is adopted by the Collector nor even any delay in any steps which he has to take by his subordinates, but it is on account of his sympathy with the tenants who are apparently according to him oppressed by money-lenders.

A. That is one thing. The patwari's palms have to be greased. The debtors live in some villages and the decree-holders cannot know them. They cannot catch hold of them.

Q. One primary reason is that the delay is due to the sympathy of the ordinary revenue official to the condition of the peasant proprietors.

A. Yes.

Q. It is also due to his feeling that these money-lenders are people who must be discouraged.

A. Yes.

Q. The second reason is the corruption prevailing among the lower revenue officials.

A. Yes.

Q. Is there any competition or rivalry between the subordinate civil judiciary and the revenue officials in the matter of the farming of lands for such periods as may be necessary to satisfy the decree in execution? Are suggestions made by the civil judiciary not accepted by the revenue people?

A. Very often it is the case. They make certain recommendations and these are not accepted by the Collectors.

Q. And the recommendations are with reference to the amount of profits that might be appropriated towards the satisfaction of decrees.

A. Yes.

Q. And the term during which the property could be leased for the satisfaction of decrees.

A. Yes.

Q. In these matters there is a difference of opinion.

A. Yes.

Q. This divergence of opinion is another cause of delay.

A. Yes.

Q. You have set out the causes of delay in the execution of decrees. Would you let us know what the remedy is?

A. I think that, if power is given to the civil courts to execute the decrees without the intervention of the Collectors, the matter would be very much expedited.

Q. I am told that if civil courts are given the power they might prove inefficient and that the persons who have to keep order and peace are perhaps the best persons to execute the decrees.

A. I don't agree with that view.

Q. Another thing which may be done with advantage to minimise the delay in the disposal of execution cases is to make the necessary amendments in the Punjab Land Alienation Act.

A. Yes.

Q. Are you in a position now to indicate any of the sections which might be so amended or modified?

A. Section 16 relating to execution.

Q. Section 16 and similar provisions of law might perhaps with amendment help the execution of decrees speedily so far as the present requirements are concerned.

A. Yes.

Q. May I ask you why decree-holders do not arrest these peasant proprietors?

A. It is difficult. Sometimes they do and they meet with untoward results. Sometimes they are murdered.

Q. That is the reason why the decree-holders do not like to go to villages?

A. As a matter of fact I have come across with several cases of this nature. When a decree-holder goes to arrest, there are murders committed.

Q. With regard to attachment of crops is there any difficulty?

A. The same difficulty is there.

Q. The crops have to be attached through the revenue authorities?

A. Yes.

Q. With regard to attachment who is the revenue official that does it?

A. The Collector. He makes it over to the revenue officer or the naib-tahsildar.

Q. I suppose in these cases it is difficult to find out moveables. Everything that the peasant proprietor possesses might be exempt under the Act.

A. Yes, under section 60, Civil Procedure Code.

Q. With reference to money decrees against peasant proprietors are they executed soon or do they take a long time?

A. They take a good deal of time.

Q. What is the reason?

A. They don't like to pay them and make all sorts of frivolous objections. When a house-property is attached, the relations of the judgment-debtors come and say that it cannot be attached. If the objections are disallowed, separate suits are filed and that takes a long time to be decided.

Q. But surely you can execute the decree notwithstanding those suits.

A. Well, sometimes they are stayed.

Q. What is the remedy that you suggest? Would you make it a rule that no stay should be given?

A. I won't make a hard and fast rule. If the case really appears on the face of it to be good, in that case stay will have to be granted.

Q. What then is the remedy? Is the obstruction to go on merrily as it does now?

A. I would much rather like that a special judge be appointed for the execution of decrees. These sub-judges have not got the time to look into these things. They have got a number of original cases.

Q. You favour the appointment of a specially selected sub-judge for doing execution work in each district?

A. Yes.

Q. Would he have work enough?

A. Yes. He might take up some other work as well, looking into the nazarat and all other ministerial things.

Q. What other work would you give him?

A. I don't think that he will find time to do other work.

Q. Will you make him receive the plaints as the senior sub-judge is doing now?

A. No.

Q. What you think is that there may be a sub-judge appointed in each district to do execution work and he will also control the central copying and nazarat establishments and the process serving department generally?

A. Yes.

Q. That would give him sufficient work?

A. Yes.

Q. That would make for speed?

A. Yes.

Q. What would be the grade of the sub-judge you would appoint for this purpose?

A. A second class sub-judge.

Q. How is the jurisdiction distributed in your province? A junior sub-judge cannot execute the decree of a senior sub-judge.

A. Special provision might be made to that effect.

Q. To execute decrees of any value?

A. Yes.

Q. That is the suggestion for reducing this delay?

A. Yes.

Q. With regard to the devolution of more powers upon sub-judges, do you think that they are fit to exercise a higher jurisdiction with regard to small cause cases. I think under the Punjab Civil Courts Act Rs. 500 is fixed as the maximum and I am told that very few sub-judges have reached the maximum. Why is that so?

A. I cannot tell you.

Q. What do you think about the capacity of the subordinate judges to exercise small cause powers?

A. I think they are quite capable of exercising these powers. I think it is unnecessary to give them such powers because the work they have is already quite sufficient.

Q. The work on the small cause side is done more expeditiously and without all the elaboration of a regular trial, and there is no first appeal?

A. Well, I think they are quite capable to take up work if they are entrusted with these powers.

Q. With regard to subordinate judges exercising higher jurisdiction, do they begin with Rs. 1,000 and go up to Rs. 2,000?

A. Formerly we used to have 3 classes of munsifs: from Rs. 100 to Rs. 500, 3rd class; Rs. 500 to Rs. 1,000, 2nd class; Rs. 1,000 upwards, 1st class.

Q. I wish to know whether you cannot give the last class subordinate judge powers up to Rs. 2,500 or Rs. 3,000?

A. No. I won't do that, because after all these are new men and I do not think it would be advisable.

Q. In the Madras Presidency we give powers up to Rs. 3,000. Why should these people be in a less position to do this work than those in Madras?

A. I would give them afterwards but not in the beginning.

Q. With regard to honorary munsifs, what is the view that is held in this province?

A. They are very much disliked. There is no absolute necessity. It is only a sort of honour given by the executive authorities to one who dances attendance upon them.

Q. But if they are selected from among classes who do not dance such attendance?

A. What training can they have?

Q. What training is necessary to dispose of simple suits up to Rs. 200, most of which are compromised?

A. We have already here honorary sub-judges.

Q. Could you increase their number with advantage?

A. Well, the feeling among the general public is that they would much rather have cases tried by stipendiary subordinate judges.

Q. What is your own feeling? Is it not right that people should not be spending their money, wasting their time and coming up with witnesses repeatedly 20 or 25 miles from the village?

A. I am of the opposite view. The number of people should not be increased. They are often prone to other influences.

Q. What influence could be brought to bear in the case of an *ex-parte* suit?

A. At first it is not known whether it would be an *ex-parte* suit.

Q. Having regard to the experience you have of existing honorary judges, you won't increase their number?

A. No.

Q. Is there any possibility of getting good men by better selection?

A. No.

Q. You have in 1922 passed the Village Panchayats Act and I see you will have 5 or 6 people on the panchayat, and they will have jurisdiction up to Rs. 50. Well, what do you think of the potentiality of these panchayats?

A. I am not in favour of that Act, nor are the people.

Q. I think the Legislative Council has passed the Act after discussion?

A. I do not know whether it is utilised in any way.

Q. Having regard to the conditions in the villages in this province, you think village panchayats are not likely to be of any use?

A. No.

Q. Why do you say so?

A. The people have no confidence in them.

Q. The panchayats are yet to be constituted; they have to be experimented upon. You have no panchayat at all now. The Act is passed and, in my place, 2 lakhs of suits are being disposed of by them every year.

A. I am against it. The people have no confidence in them.

Q. With regard to the execution of decrees, would you like to have the law of limitation changed in any way? I am drawing your attention to the provision in section 48, Civil Procedure Code. Would you curtail the period to six years?

A. No, I won't.

Q. Why?

A. Having regard to the fact that so many frivolous objections are raised by the judgment-debtors, I would have it at 12 years.

Q. Supposing you have 12 years. Would you remove the provision in Article 182 of the Second Schedule of the Limitation Act with regard to steps in aid of execution, compelling the decree-holder to apply every three years during these 12 years, in order to keep the decree alive?

A. I would rather that that provision should remain as it is.

Q. Why?

A. Well, if he does not execute the decree within the 12 years and he comes after the expiry of 11 years to execute the decree, the man raises certain objections or otherwise prevents the execution of the decree. If, as a matter of fact, the application was made from time to time, then he could prove if there was any obstruction by fraud.

Q. There is already a proviso in section 48: it would be still there.

A. But if he does not make an application.

Q. You are not in favour of taking away the steps in aid of execution?

A. No.

Q. Are you aware that many of these applications are merely filed to keep the decree alive?

A. There is no doubt about that.

Q. That entails a lot of work on the subordinate judges and courts.

A. Well, I would like to keep the provision of the law as it is.

Q. Is there any possibility of having the Transfer of Property Act extended to this province? Would that work well?

A. I should think so. I would like to have the Transfer of Property Act applied to the Punjab also.

Q. Would you like to have all sales being evidenced by registered instruments, because section 34 of the Transfer of Property Act refers to sale-deed and another section says that the sale-deed should be registered?

A. Here we have oral evidence.

Q. Would it not be better to have a rule, as in every other province, that every sale must be evidenced by a document?

A. I should think so.

Q. Therefore you are generally in favour of the Transfer of Property Act being extended to this province?

A. Yes.

Q. With regard to partition in joint Hindu families, would you like to have a rule which compels the execution of document to evidence the partition and the registration of such a deed? This is the surest possible way of minimising the oral evidence, if you want to do anything with reference to delay in civil courts. In almost 35 or 40 per cent. of your cases, I am told the question often arises as to whether a family is divided or undivided and that has to be decided on oral evidence. If it was made a rule that all documents should be evidenced by a registered instrument, would it not minimise your trouble?

A. Yes.

Q. We have after all to fix an arbitrary limit.

A. I will say five hunderd rupees.

Bakshi Tek Chand.—*Q*. Would you apply that to agricultural land in a family partition between two brothers?

A. I will exempt partitions of agricultural land because they are decided by the revenue officer.

Sir T. Desika Achariyar.—*Q*. With regard to benami transaction would you be in favour of a rule that a person should not be permitted to say that the document which he has executed and the execution of which he admitted before the registering officer had never been intended to be acted upon, but was a mere sham deed?

A. No, I am not in favour of that. In a province like the Punjab people do execute a large number of such transactions.

Q. That is so because it is permitted. Supposing you make it a rule that after ten years from now no such plea should be put forward. We cannot be solely guided by what has transpired in the past. We must try, if possible, to devise means of putting down delays. What do you think of such a rule? Why should a man execute a document and say five years afterwards that it is a sham?

A. Suppose, for instance, he has purchased in the name of a minor son ....

Q. That is not the kind of benami transaction I am referring to. I am talking to you particularly of denial of documents saying that they are sham transactions.

A. I am not in favour of such a denial.

Q. I am not talking of a document which is in the name of a *karta* of Mitakshara family. I am referring to documents executed which are pleaded as those which had never been intended to be acted upon.

A. I am not in favour of that.

Q. Would you like to have a rule that such a plea should not be accepted?

A. Yes.

Q. With reference to the conduct of a case generally in this province, at the time of settling issues, are the parties examined?

A. Recently they have begun examination but even now in some cases they do not examine.

Q. I suppose your High Court has sent out a circular saying that as far as possible the points at issue should be ascertained by the examination of parties at the first hearing?

A. Yes.

Q. Before you passed that rule that was not the practice?

A. No.

Q. Because people neglected the provision of the law, you had to issue that rule?

A. Yes.

Q. After the issues are settled who sets down the case for trial?

A. The judge himself.

Q. When are the documents filed?

A. Sometimes a date is fixed, that is, ten or fifteen days after the settlement of issues and sometimes on the very date of settlement of issues.

Q. What is the provision permitting the documents to be filed on a later date?

A. They should be filed on the very date of issues.

Q. Are the documents filed with the plaint or the written statement?

A. In Delhi they never used to be.

Q. Supposing a man sues on a pro-note.

A. If a suit is based on a particular document then, of course, it is filed with the plaint.

Q. The documents that are used for the purpose of proving the case, when are those filed?

A. On the date of hearing or after fifteen or sixteen days.

Q. Do the courts see whether those documents are admitted by the opposite party?

A. That is not generally done.

Q. Because courts do not know what the documents are and nobody takes any notice when the documents come in.

A. Yes.

Q. Have you circularised against this also?

A. Yes.

Q. Then with regard to interrogatories, discovery and inspection, are these chapters used in the mofussil courts?

A. My experience is confined to Delhi. In Delhi, of course, they used to have recourse to these provisions very often.

Q. You practised in Lahore also?

A. I have practised in the High Court.

Q. Therefore you are not in a position to know anything about the mofussil courts?

A. No.

Q. When a case comes on for hearing—take a fairly complicated suit—do people open their case?

A. That is not done practically.

Q. Have you circularised the mofussil courts with reference to that also?

A. So far as I know we have done that but I am not sure about that.

Q. I wish to put you certain questions relating to appellate court. First with regard to High Court, is it true that second appeals are pending for an inordinately long time?

A. Second appeals which are likely to go up before a Divisional Bench take a long time.

Q. How long do they take?

A. Two or three years.

Q. And the first appeals?

A. Three or four years.

Q. What is the reason for the first appeals being delayed?

A. The High Court is undermanned.

Q. There is not a sufficient number of Judges to cope with the work?

A. Yes.

Q. So far as second appeals are concerned does the same reason apply in that case also?

A. Yes.

Q. Is it not on account of printing?

A. Printing is very expeditiously done.

Q. Judging from the report you had three more Judges sanctioned.

A. That was two years ago.

Q. Supposing a normal standard is adopted, how many Judges and how many years would be required to get rid of the arrears?

A. We ought to have a couple of Judges.

Q. The institutions do not appear to be very much, the pendency seems to be high. You yourself say that second appeals are pending from two to three years and first appeals from three to four years. What is the remedy?

A. Increase the number of Judges.

Q. Supposing arrears are disposed of, do you think that the Judges would be able to cope with the ordinary institutions? How much time and how many Judges would you like to have to dispose of your arrears? I understand the only trouble is with regard to arrears.

A. At least five Judges and five years.

Q. That is the state of the High Court here. Is there any other reason why there is so much delay?

A. I do not think there is any other reason because we have not got excuses that are put forward by lower courts that witnesses have not been served and so on. At the same time there are so many murder references that two benches of two Judges each sit all the year round. Much time is taken by criminal work.

Q. How many such references are there?

A. About 200.

Q. I wanted to put before you a proposal which appears to be calculated to lessen the number of appeals to the High Court. Supposing there was a first appellate bench consisting of two sub-judges to hear appeals, both on questions of law and fact, with no second appeal, do you think that this bench would be liked by the public?

A. I do not think the litigant public would like it. They have more confidence in the High Court than in any other court.

Q. Why?

A. Because they like their cases to be decided by the High Court.

Q. If the proposal is given effect to, they would have to spend less money, they would have to travel shorter distances and they would not have to come to the High Court a dozen of times.

A. They would like to spend more money, travel long distances and come to the High Court for a dozen of times, but they would always like to have their cases decided by the High Court and not like to be deprived of the right to which they are entitled.

Mr. Justice Stuart.—*Q*. Have you made enquiries on that point?

A. Yes.

Q. Well, on enquiries made we have been told by many men that they do not want to go to the High Court?

A. That may be an individual opinion, but generally the idea is that the final appeal should be to the High Court.

Q. Is that the idea of the loser?

A. No, that is the general idea.

Q. It is rather difficult to arrive at public opinion. Every man has his own opinion.

A. Yes, for instance, there was a proposal some time ago that the jurisdiction of district judges should be increased from Rs. 5,000 to Rs. 7,500, but that did not appeal to the members of the council.

Q. I do not think that members of the council represent the public. I want to be clear on the point. The difficulty is that it is very hard to know what really the public opinion is either in this country or in any other country.

A. But individual opinions differ.

Sir T. Desika Achariyar.—*Q*. I am not asking you whether my friends in the council represent the public or not. What I am asking you is whether on the whole it would not be advantageous to have these appellate benches so that there might not be second appeals and third appeals? Do you not think that this gambling in litigation is ruining our country?

A. That may be an individual opinion, I have never come across such a man who has expressed this opinion. They all desire to go to the High Court. Even in small cases of Rs. 10 or Rs. 15 they would like to bring their cases up to the High Court.

Q. You mean to say that if a man has given Rs. 50 on loan and wants to recover it, he would like to go to the High Court?

A. Yes.

Mr. Justice Stuart.—*Q*. Has the man who expresses this opinion an actual case himself or is he talking of another man who has got an actual case? Does he say this from his own point of view or from the point of view of that man who has got an actual case? We have taken evidence in other provinces and there the litigants who had actual cases said that they would not like to go to the High Court.

Sir T. Desika Achariyar.—*Q*. Is that your considered view?

A. Yes.

Q. Can you in any manner restrict the value of second appeals which are taken up to the High Court so that we may diminish the number of such appeals?

A. Second appeals are only on points of law but not on points of facts.

Q. Do you think that it would be possible to disallow any appeal in cases which are less than Rs. 1,000 in value?

A. I would leave the law as it is. On question of law there must be an appeal to the High Court. Even on questions of facts, we often see that they are not decided properly, but we cannot help it, we are bound to accept them as they are.

Q. There is one other matter which I want to ask you about, because opinion like yours must have great value. Supposing two courts agree, the first court and the appellate court and second appeal is filed. Supposing you make it a rule that no second appeal should be filed unless the decretal amount is deposited in court, do you think that that would work well?

A. No, that would work great hardship. Generally executions are not stayed by the High Court, so far as money decrees are concerned. We stay execution only in the case of immovable property.

Q. Supposing it is made a condition that in money decrees the money should be deposited in the High Court?

A. I am not in favour of it.

Q. Do you think that any hard and fast rule like this would work hardship?

A. Yes.

Colonel B. O. Roe.—*Q*. I understand the question of appeals in the High Court is really a matter of *izzat*. When I was at Ferozepore I know that a man told me he went to the High Court because his neighbour had gone. Do you think that it is entirely the personnel that commands confidence?

A. The High Court has some sort of restraining influence upon these Judges.

Q. Perhaps you will agree with me that the High Court Judges write long judgments and sometimes they are as long as those of district judges? In murder cases they write very long judgments, but in Bombay the Judges simply give orders that for the reasons stated they agree with the judgment of the learned judge and dismiss the appeal? By writing long judgments you get more work.

A. Yes, but I am told a committee appointed for looking into these matters has recommended that we should not write long judgments in second appeals which are not likely to go to the Privy Council.

Mr. Justice Stuart.—*Q*. Is it the practice to dictate the judgment in the course of the appeal or to reserve it?

A. Very generally they are pronounced immediately.

Q. You mean a very rare number are reserved?

A. Yes.

Q. Do you individually keep any check over the delays in the subordinate courts or to whom does it go in the High Court?

A. We have got an inspection Judge every year.

Q. I mean how do you know whether the work in Gujranwala is in arrears or not?

A. Returns are sent by the district judges.

Q. You don't see them yourself?

A. No.

Q. To whom do they go?

A. They go to the Registrar and are put up before the permanent Judges in a meeting which takes place every month.

Q. How long is the meeting held?

A. One day.

Q. Is it not a fact that no returns are sent up for cases pending for over 3 months?

A. I cannot tell that.

Bakshi Tek Chand.—*Q.* With regard to second appeals to the High Court what is the procedure at present? They are first laid before two Judges for preliminary hearing under Order XLI, Rule 11.

A. Yes.

Q. In how many days is this preliminary hearing held?

A. Within one or two weeks of the institution.

Q. Do the Judges make free use of their powers under Order XLI, Rule 11, in urgent second appeals at the preliminary hearing?

A. Very frequent use.

Q. Therefore with regard to frivolous second appeals there is not much delay.

A. No. I think more than 50 per cent. are thrown out at the preliminary hearing.

Q. With regard to second appeals only those appeals are admitted where there is a really arguable question of law.

A. Yes.

Q. Therefore, for this reason you are not in favour of curtailing the right of second appeal.

A. No. I would not curtail it.

Q. What about the efficiency of district judges of the present day compared to those of 15 years ago?

A. I think they are very much inferior in ability.

Q. With regard to their decision on findings of fact is there general satisfaction or not?

A. No.

Q. Therefore, if the right of second appeal is cut down still further and they are made final judges of fact as well as of law, what do you think will be the general opinion?

A. People won't like that.

Q. With regard to the Transfer of Property Act would you be in favour of introducing all the technicalities of that Act to this province?

A. Yes.

Q. Don't you think that the present system is working well? The general principles are followed but the technicalities are not insisted upon in our province. Is this province not considered to be fit for that?

A. My personal opinion is that the whole Act should be applied.

Rai Bahadur RAJ NARAIN, Bar.-at-Law, Delhi.

Written Statement.

1. A.

I. High Court.

Original suits.

(*a*) Commercial, 9 months.

(*b*) Other, 9 months.

First appeals from 12 to 24 months according to amount of printing.

Second appeals from 6 to 12 months.

Miscellaneous appeals, 4 months.

II. District and Subordinate Courts.

Original suits.
  (*a*) Title, 9 months.
  (*b*) Money, 8 months.
  Regular appeals, 3 months.
  Miscellaneous appeals, 2 months.

III. District Munsif.

Original suits.
  Title, 4 months.
  Money, 4 months.
  Rent, 3 months.
  Others, 3 months.
  Small Causes, 2 months.

B. I. Claim proceedings in execution 6 months.
  in District Court, 6 months.
  in Sub-Court, 6 months.
  in District Munsif Court, 6 months.

C. Presidency practice. I know nothing about it.

2. Yes I consider time taken in these proceedings does generally exceed the limit of reasonable time.

The causes are:—

(1) Courts not having serving staff of their own.
(2) Process of service being in the hands of dishonest men.
(3) Unsuitability to the present age of the law relating to service and the machinery provided for the purpose.
(4) Frequent changes of judges.
(5) Seats of judges remaining vacant without any arrangement for disposal of work already fixed.
(6) Unpunctual attendance of judges.
(7) Fixing too much work for the day.
(8) Unsuitability of the law relating to minor defendants including appointment of guardians and abuse of the liberty given to the guardians to withdraw.
(9) Frequent grant of temporary injunctions in weak cases.
(10) Necessity of joining members of Mitakshara family.

3. I suggest that the causes stated in answer to the last question should be removed.

4. I consider that judicial appointments should be given as far as possible to the best practising lawyers of undoubted honesty. These posts should not be given to men of the clerical staff.

5. No special training is necessary.

6. Yes, frequent transfers impede justice.

7. Number of cases decided and orders upheld in appeal.

8. No, the concentration of courts does not impede justice. If courts are scattered, justice will be impeded. There is not much waiting for counsel, and as much of it as there is ought to be tolerated within reasonable limits. This impediment is a necessary evil. Justice should not be sacrificed for speed.

A general rule that counsel should not be waited for, is a very unpopular proposition, and the public do not like it.

9. No.

10. No.

11. No.

12. No. Additional district judges may be appointed where and when necessary.

13. The public don't mind. Only to selected officers.

14. No, I have no experience.

15. No.

16. (*a*) See section 128 and Order 37. Yes, provided it does not curtail the right of appeal.

(*b*) I have no experience of Bengal or Bihar.

18. I do not think the right of appeal is given in too many cases particularly as the High Courts are very strict in exercising their power of revision.

19. Yes, the right is necessary but the right should be limited to pure questions of law.

20. I don't know that many frivolous second appeals are filed. I would not curtail the right of appeal because the value of the subject matter is comparatively small.

21. No, poverty of a man should be no ground to curtail his right of appeal. The execution of the decree need not be stayed.

22. In first appeals the general practice is to issue notice and hear the parties in presence of each other, and I think this saves time of the court and counsel. Generally there is material for both sides to be heard on.

23. I cannot say that right to apply for revision is much abused. Applications are sometimes filed when there is really no ground for revision. It is the fault of counsel who file them and the remedy will lie in their correction and not in the curtailment of the jurisdiction of the High Court. I will accept the first suggestion but not the second.

24. (1) I would make the summons of court to witnesses and parties serveable by the parties themselves or their pleaders' munshis.

(2) Make the representation of minor defendants and appointment of their guardians easier.

(3) I would prevent the issue of commissions as far as possible. Where indispensible, I would appoint a man and send him to examine the witness.

(4) I would encourage affidavits being accepted in evidence particularly in commercial cases and on matter of formal proof nature (Order 19).

(5) I would not allow a court to be without a judge.

25. I would adopt the procedure of section 106 of the Transfer of Property Act.

27. The provisions of Orders VII and VIII are generally complied with.

28. Post Office and village officers may be used as agencies for service of process. This will not be altogether satisfactory because post peons and village officers are subject to the same temptations as the present serving staff.

29. Yes.

30. This will be useless unless the peon reports himself at a time previously appointed.

31. Exhaustive examination and cross-examination of the parties or their agents, before the issues are framed; except in the case of foreign firms. Each controversy should be made a separate issue and covering or comprehensive issues should be avoided.

32. Yes, they are neglected. The reason is want of time.

33. Yes, to both the questions.

34. No, it is not enforced. The rule may be enforced.

36. I agree with the suggestion.

37. I disagree with the suggestion.

42. *Ex parte* injunctions are frequently granted without sufficient inquiry or evidence. As a rule they should not be granted without hearing the other side. In very urgent cases they may be granted only to be in force up to the date for which notice is issued when they may be made absolute or discharged.

43. The judgments are not generally too long.

44. No.

45. Dates are given by the judges themselves.

46. Pleaders are generally consulted.

47. Commissions take long to be executed. I would insist on interrogatories by the party examining but that cross-examination and re-examination be open. I would not grant applications for commissions except in very special cases and depute a man from my own district as commissioner.

48. To insist on written applications and affidavit for adjournments will make the matter more expensive and take more time.

49. Cases are not generally continued day after day. The reason is that cases are fixed for the next day already both in the diary of court and of the counsel.

63. I consider that one notice is enough.

64. I consider that one notice is enough.

65. I consider that one notice is enough.

66. I consider that one notice is enough.

67. No.

68. Yes.

76. Yes.

77. I consider they should be registered.

81. I agree that a rule of this kind should be made.

86. Yes, publication of judgments of High Courts and Courts having the status of High Courts except in authorised editions, should be prohibited.

87. Yes. Codification of Hindu and Muhammadan and Customary Laws.

Rai Bahadur RAJ NARAIN, Bar-at-law, Delhi, called and examined on Monday, the 14th April 1924.

Sir T. Desika Achariyar.—*Q.* I want to ask you about some matters relating to Delhi and important commercial matters. In Delhi there was piece goods speculation and there was a large number of commercial suits before the courts. Is that so?

A. There was a very large number after the war finished and immediately before it finished. There was influx of commercial cases due to circumstances arising from the war.

Q. That is on account of dislocation in the piece goods market and trouble in connection with exchange. Were these suits tried by the district judge or by the sub-judges?

A. Mostly by the sub-judges.

Q. Were they tried expeditiously?

A. They were not delayed, not more than the others; if anything slight consideration was given to them. Whether it was effectual or not I cannot very well tell you but it was suggested that some consideration should be paid to them and they should be more expeditiously dealt with.

Q. Was that suggestion acceded to?

A. Not successfully.

Q. It could not be?

A. Yes.

Q. Why?

A. Because of the circumstances which apply to delays in other cases.

Q. Owing to congestion of work?

A. Congestion of work and also other causes which I have cited.

Q. After the influx of these suits owing to speculation in 1920 or 1921, were suits of commercial nature instituted largely in Delhi courts?

A. Delhi is a place where we have mostly commercial cases. Land cases are fewer.

Q. Do you think that it is necessary to have a trained judge, a judge trained specially in commercial cases posted there?

A. It will be a great advantage.

Q. Do you think that it will make for speedy and efficient disposal of cases?

A. Yes.

Q. I think at present sometimes it is difficult for an ordinary sub-judge to understand these cases?

A. By the time he understands these cases it is his time to be transferred.

Q. So that the benefit of the experience gained is lost to you?

A. Yes.

Q. What sort of training would you give to the sub-judge to try commercial cases?

A. Well my personal knowledge is that if a man is taken from amongst the best practising lawyers in Delhi and put to decide these cases, he would do that work much more expeditiously than any other gentleman either from the Civil Service or from the Provincial Service.

Q. In other words you want leading practitioners who have had experience in conducting commercial cases to be appointed as judges?

A. Yes.

Q. What pay would you give them?

A. Rs. 2,000.

Q. How many judges, do you think, would be required to do this work there?

A. I think one judge will do.

Q. What do you think of the suggestion of sending a sub-judge to Calcutta or Bombay or to any other place like that for the purpose of getting some training in business matters and then posting him at Delhi?

A. I do not think that this will suit in the case of Delhi.

Q. Why not?

A. I think that Delhi commercial cases are of a mixed nature, by mixed nature I mean a certain amount of custom peculiar to Delhi custom relating to trade.

Mr. Justice Stuart.—*Q*. Is the method of keeping accounts different in different businesses? We were told that in Cawnpore the method of keeping accounts in the hide business is quite different from that of sugar business.

A. I do not think there is any difference in keeping accounts.

Q. There can be difference undoubtedly. Indian system is quite different from the English system.

A. Well here in India I do not know there are different methods of keeping accounts.

Sir T. Desika Achariya.—*Q*. Well having regard to the peculiar conditions of commercial litigation in Delhi, you think that it is no use sending sub-judges to Calcutta or Bombay for getting training in commercial matters?

A. I do think so.

Q. What do you think is the proportion of commercial litigation to other litigation in Delhi?

A. Well I should say ⅔rds commercial cases and ⅓rd other cases.

Q. I suppose suits of the value of Rs. 5,000 or upwards are commercial cases?

A. Not all, but mostly.

Q. And that a large number of cases of the small cause nature in Delhi are also commercial cases?

A. Yes.

Q. I think at Delhi you have five sub-judges including the Registrar of the small cause court and senior sub-judge as well as the district judge? I think that is the full compliment of the judiciary in Delhi?

A. Yes.

Q. Do you think that these judicial officers are enough to dispose of the volume of work that faces them?

A. Well they were not enough for the time when this influx came, but I expect they will be sufficient in future.

Q. What is the small cause court jurisdiction which is exercised by the small cause court judge?

A. Rs. 500.

Q. What do you think of the suggestion to increase the small cause court jurisdiction?

A. Not unless you employ superior judges.

Q. So you will invest with superior small cause court powers according to the qualifications of the judge?

A. Yes.

Q. In other words you will invest selected men with powers up to Rs. 1,000, other people up to Rs. 750 or Rs. 500 and so on?

A. Yes.

Q. Well do you think that that will make for speedy disposal of cases?

A. Yes.

Q. And that will also have the additional advantage of preventing appeals and giving finality to decisions?

A. Yes.

Q. To whom would you give powers up to Rs. 1,000? Would you give them to all the sub-judges there?

A. No. I would not give these powers to any one below the senior sub-judge.

Q. Would you have all senior sub-judges then and give them increased powers? I wish to know the needs of Delhi.

A. The need of Delhi is to have a small cause court judge having jurisdiction up to Rs. 3,000 and I shall have a much superior judge to the present judge of the small cause court. I do not mean to make any personal reference by saying so. The status of the small cause court judge at Delhi should be equal to the status of at least a district judge.

Q. By district judges, you mean those who are soon to be promoted to that post, or those who reach that position by meritorious service?

A. Yes.

Q. With reference to commercial cases. I see from the report that there is a large number of insolvency cases. What is the reason of this influx of insolvency cases?

A. Pauperism of the country is responsible for this, brought not by speculative cases particularly but by the war conditions.

Q. Is it due to unsuccessful trade?

A. Yes.

Q. Do you find insolvency cases generally in court or for any particular period? Insolvency means one or two things—poverty or fraud.

A. You do not find these cases all the year round.

Q. Who deals with these cases?

A. They are dealt with by the judge of the small cause court who has jurisdiction to try insolvency matters.

Q. Is there any official receiver there?

A. Yes, there is.

Q. What does he receive?

A. He receives ten per cent., 3 per cent. of which goes to him and the other 7 per cent. generally covers his expenses.

Q. Does the creditor get anything?

A. Very seldom.

Q. Are any assets attempted to be realized?

A. Well if any attempts are made they are futile. They take much too long.

Q. What remedy would you suggest for this admitted evil?

A. I would suggest that as soon as the assets come into the hands of the official receiver, he should dispose them of at once.

Q. I think the difficulty is in getting in any assets?

A. Even after they are got, proceedings are very dilatory.

Q. Then what is your suggestion?

A. My suggestion is that assets should be dealt with immediately they come into the hands of the official receiver.

Q. I want your suggestion? What provisions would you like to add to the Insolvency Courts Act?

A. I do not think it requires any amendment so far as this thing is concerned.

Q. I see some important liquidation cases. Are there many companies going into liquidation?

A. Yes. Many liquidation cases are concerned with the Alliance Bank and Boulton Brothers.

Q. I understand they are also a temporary phase of the litigation in Delhi.

A. Well I think Delhi is a place where we may expect these cases every day. In the ordinary state of things some companies are going into liquidation and others are springing up.

Q. Are they properly dealt with? I suppose they go to the court of the district judge?

A. They go to the court of the district judge.

Q. What is your experience with reference to these cases? Are they dealt with satisfactorily and expeditiously?

A. My experience is that they are not dealt with as expeditiously as they ought to be.

Q. How is he to do it? I think the party is more or less responsible for the dilatory conduct of the case.

A. So far as the proceedings in court itself are concerned, they may take much time. But so far as the realization of the assets is concerned, it ought to be dealt with immediately. The assets ought to be sold by auction, and not to be collected by suits. Frivolous suits by contributors and little disputes between various shareholders themselves ought to be expeditiously dealt with.

Q. You will have greater expedition in the disposal of commercial cases but you don't want any special agency for it. An ordinary district judge can do it?

A. Yes.

Q. You think that a little more diligence is necessary, but not the amendment of the law?

A. No amendment is necessary.

Q. How about the appeals?

A. I do not think there is any cause for complaint.

D

Q. With regard to the average duration of suits in the Delhi court on the small cause side, what do you think is the duration at present?

A. I think about 2 months.

Q. You think that it is not more than the reasonable time that is required?

A. No.

Q. With regard to original suits?

A. I think the duration is longer than I think it ought to be.

Q. What do you think is the reasonable duration for original suits in Delhi courts?

A. I should think 9 months.

Q. Do they take much longer than 9 months?

A. Important cases take much time.

Q. How much time?

A. Two to three years.

Chairman.—*Q*. We want to know if you have got some case in your mind that you can give us by number?

A. I think I have one case in mind. It is a case of mixed custom in Hindu Law. The case is Chandu Lal *vs.* Ram Chander. I think it has already taken three years and it is not yet complete.

Sir T. Desika Achariyar.—*Q*. Were there many suits of that kind for over one year?

A. You will find a large number of them.

Q. What would be the percentage of suits which will be pending now in that manner?

A. About 25 per cent.

Q. What is the delay due to? Is it for want of courts or is it due to the dilatoriness of the parties?

A. One cause is courts not having process serving staff in their own control.

Q. 25 per cent. of the suits are one year old—original suits which are ready, in which issues have been settled and witnesses examined. Are many suits left part heard in that manner, *i.e.*, some witnesses examined and some waiting to be examined, etc.?

A. Yes. 25 per cent.

Q. You find it spread over all the courts?

A. Yes.

Q. Is there any means of minimising this delay?

A. By removing the impediments.

Q. With regard to these delays Mr. Downie of Delhi said that he had a suit in Delhi, that he was examined-in-chief on a very simple matter, but he was not cross-examined. The defendant refused to cross-examine him. Then he went to England and he was cross-examined in Liverpool. With regard to these cases which are pending, are there many in which evidence with regard to customary law has to be gone through?

A. There is one such case to my knowledge.

Q. Are there many such cases before the Delhi court, where custom and usage bearing upon something or other will have to be enquired into?

A. No.

Q. I think you are in favour of having the customary law codified?

A. Yes.

Q. Do you think that would minimise a lot of oral evidence and save the time of the courts greatly? That is your idea?

A. Yes. Pure customary law does not affect Delhi. But there is no question of Hindu Law in which you cannot drag in custom.

Q. You also say that Hindu and Muhammadan Laws should be codified. What departments of the Hindu and Muhammadan Law?

A. Succession, alienation and adoption.

Q. Is it with reference to these that you get a lot of oral evidence?

A. Yes.

Q. In Delhi you thought that judges were being transferred very frequently and sometimes the seats of the presiding judges remained vacant and the judges themselves attended not punctually?

A. Well, unpunctuality is not so much a complaint as the other things.

Q. Any how you think that the judges should not be transferred so frequently?

A. They ought to be transferred as seldom as possible. They ought not to be transferred because they have been there five years.

Q. In the interests of public administration I think transfers of public servants would be necessary?

A. I do not think it is the custom in England or in any other country to transfer the administrators of justice.

Q. I see you are not likely to get in outlying stations people of any merit.

A. I don't know that. With the spread of legal education I think it may not be difficult.

Q. I was told there was some difficulty in finding people even at headquarters suitable for sub-judge's places.

A. It is so. I know about districts which lack in men.

Q. Your suggestion would be one which is applicable perhaps to Delhi: the best practising lawyers of undoubted honesty.

A. Yes. I am not prepared to say that all lawyers are dishonest.

Q. You are averse to have such appointment given to people promoted from the clerical staff.

A. Decidedly.

Q. With regard to service of process would you let us know exactly how it should be improved? You say that the unsuitability of the present law relating to service and the machinery provided for the purpose and the process service being in the hands of dishonest men, all these contribute to delay.

A. My first point is that important towns in the Punjab have reached that stage where the service of the opponent and one's own witnesses ought to be entrusted to the party himself, courts rendering such assistance as the parties require.

Q. That is, in other words, you want the party to bring his own witnesses.

A. To be able to serve his own witnesses.

Q. The system you suggest is that the process instead of being sent to the nazarat should be handed over to the party.

A. Yes. The services of the peon should be lent to him.

Q. The process server should also be asked to attend on the party and see that the service is made.

A. Yes.

Q. The duty should be cast upon the party to have the process served through the peon.

A. Yes.

Q. So, the first suggestion is that you hand over the process to the party asking the process server to attend on the party and the party makes the process server serve the processes or the summonses on the defendant or the witnesses?

A. Yes.

Q. What is your next suggestion?

A. The parties may be given the option to take the summonses and have them served through their own munshi and the courts should accept the affidavits of the munshis or the clerks as sufficient evidence of service, subject of course to rebuttal.

Q. Of course the details have to be filled in. This is your suggestion generally. You think that this procedure if applied to important towns would minimise delay and facilitate service and there would be less cases of witnesses and parties not being served.

A. Yes.

Mr. Justice Stuart.—*Q*. Would you specify the towns?

A. Delhi, Ambala, Ludhiana, Attock, Jullupdur. Amritsar, Lahore.

Q. Would you confine it to these cities?

A. Yes.

Q. Would you take Multan city?

A. I would be inclined to take it.

Q. Would the Bar be sufficiently competent in these places? I take it that in Delhi, there would not be very much trouble.

A. Yes. In Lahore, Amritsar and Ludhiana also, there would not be much difficulty.

Q. How would you deal with cases of minor defendants and representatives of deceased persons?

A. That is a very difficult subject. My own belief is that in 99 out of 100 cases it is the dishonesty of the parents themselves which brings forward the cases of minors of Mitakshara family. I think that if we throw entirely the burden on the minors to show that their parents are not taking good care of their children, unless they show it positively to the court, the courts shall presume that they are the proper guardians, that they have taken every possible care of them and that they have protected their interests. Secondly, in that respect, the application of Mitakshara in the administration of justice in British courts will have to be slightly altered.

Q. That suggestion of yours necessitates the assumption of many things. We must presume that the minor's interest is likely to be protected always by this dishonest father. If he is dishonest what is to be done?

A. I started with the presumption of honesty in his favour. I throw it on the boy to show that he has been ill-treated or that his interests have been sacrificed.

Q. Eventually those who represent the boy have to do it. It will be a conflict of interest between the father and son. How could the son's claim be protected by the father in such a case?

A. Well, my contention is that there is never a real conflict.

Sir T. Desika Achariyar.—*Q*. So that in all cases you will assume, at any rate in the first instance, that the natural parent was the guardian.

A. Yes.

Q. With regard also to service on legal representatives of deceased defendant, the plaintiff should have the service effected upon him?

A. Exactly.

Q. Are there many mortgage suits in Delhi?

A. Well there are a good number.

Q. And suits for sale of mortgaged property based on simple mortgage deeds?

A. Yes.

Q. In these cases do you agree that it is unnecessary to draw up two decrees, one preliminary and the other final?

A. It is quite unnecessary.

Q. Apparently there is some mistake in your answer to question 67. It does not fit in.

A. Yes, my typist has made a mistake.

Q. You agree that it is not necessary to draw up two or three decrees.

A. Yes, it does away with so many notices.

Chairman.—*Q.* I want to ask some questions about commercial suits. As I understand the piece goods market, in 1920, was in a very bad state and exchange had gone against it.

A. Yes and there was boycott movement.

Q. Apart altogether from the boycott movement, at any rate the piece-goods trade had gone absolutely flat and I take it that a good many people who had suits on bills of exchange were fighting for time in any way they could and that a great many of such people who accepted bills of exchange had no sane defence but they set up defences and managed to delay judgment for a year and even more.

A. Yes.

Q. In that class of cases do you not think it would be a great advantage if provision of Order 37 had been applied in Delhi?

A. It has been made applicable recently.

Q. In those days if it had been applicable they would have been made to table their money before they started to quibble.

A. I take it to be so unless the ruling was on the contrary. In these days we go by ruling.

Q. I am talking of cases in which the man accepted a bill of exchange and who has been in piece-goods trade on written c.i.f. contracts. Of course in that case they have to table money as security?

A. Yes.

Q. I take it in course of your experience you have been on both sides, the plaintiff and the defendant? I do not want to go into names.

A. Yes.

Q. Would you tell me, when this evil was rampant, did not people successfully put off matters by years and quite frequently?

A. Yes.

Q. What was the usual line adopted to obtain this delay?

A. The first thing is to come out with the plea 'do not know,' 'do not admit,' 'we deny' and therefore you deny all the allegations in the plaint. Then 'plaintiff was not ready to perform his part of the contract,' the plea which to my mind should never be accepted.

Q. If the suit is not for damages, in suits on bills of exchange it is quite an irrelevant plea?

A. Even in a case, where the suit is for damages, the plea of this nature should never be accepted as it leaves the plaintiff in dark as to what he has got to prove.

Q. Then what happened?

A. The first plea is, I really forgot, to evade service. After the service has been made if there is a minor partner in the firm no one would like to be his guardian and suit is kept hanging for a year over this matter. After that we get to issues, then we have the whole thing denied. The documents have to be put in and you do not know which have been accepted and which have been denied. Then you summon your witnesses and apply to the court and if the other side can approach the peon he returns with the remark that some of the witnesses have not been found, which means adjournments and each adjournment means three months.

Q. We had a case where a big firm in Manchester had brought a suit and there was tremendous litigation started, first of all whether they carried on business in British India and then somebody alleged that there was another partner—he did not suggest the name of the partner—and that necessitated sending out commission to England to find out who was the other partner. Does that happen to your knowledge?

A. That is quite possible.

Q. Would you tell me another thing. I won't take the case of claims on a bill of exchange; but the case of claims for damages for non-acceptance of goods. The goods are there and probably they are in the godown of the bank. They may be goods perishable in some sense of the word or at any rate the market may be going down and down. Now I want to know whether in a case like this the court takes a sensible view. Have you ever applied for the appointment of a receiver and the sale of goods? What view does the court take in these cases?

A. Well in a case which occurred only about a fortnight ago, I applied for the appointment of a receiver and the sale of goods to which the other side objected. The objections of the other side were quite evasive and the court made an order equally evasive not saying one thing or the other.

Q. Did the court appoint a receiver or make order for sale?

A. It said that we could do it on our own responsibility.

Mr. Justice Stuart.—*Q.* What are the exact facts of that case? What did the defendant do?

A. The goods arrived in Delhi, the shipping documents were offered and the vendee refused to take their delivery. We sued for the price of the goods and applied for the appointment of a receiver and for the sale of goods, but the other side replied that there was cheating in connection with the sale of goods.

Q. In other words he repudiated the contract?

A. Yes, and refused to take delivery of goods. He repudiated the contract.

Chairman.—In some cases some time may be given because it is possible that the goods which do not fetch any price at present may bring something after some time. It is quite possible that the goods may bring practically nothing.

A. Yes.

Q. I am not suggesting that in every case the court should wait for proper market, but in those cases only where the court sees that waiting for some time would bring some fruitful results. I do not say that every case in which order was not granted straightaway was wrongly decided. The plaintiff cannot interfere with the case by selling the goods, because if he does so it will raise a new set of issues and will take a year or so more.

A. Exactly so.

Q. So you think that in that matter something might be done to make the rule a little plainer?

A. Yes, the rule ought to be made plain.

Q. I take it that the judges trying commercial cases in Delhi are familiar with the c.i.f. contract, shipping documents and so on? They are persons who have got some experience in these matters?

A. Yes.

Q. You like to see that those who are specially gifted with ability to understand commercial and business matters may be kept at Delhi?

A. Yes. A very able and senior judge has been taken away from us. Perhaps he has gone on promotion.

Q. Who was that gentleman?

A. Diwan Somnath. He is one of the ablest men. He picked up these matters like anything.

Mr. Coldstream.—*Q.* I think you said that you would prefer to appoint judicial officers from among the local legal practitioners. I think you have suggested this with a view to expedite the disposal of cases there?

A. Yes.

Q. Could you tell me what different procedure would they adopt? Do you think that a legal practitioner has got more knowledge of law? If so, how would he apply it?

A. Not only the knowledge of law, but the knowledge of the tricks of the parties and the pleaders. They know what these tricks are and how to deal with them.

Q. So you mean that delay is chiefly due to the tricks of the parties and the pleaders and that they are responsible for the delay caused in the disposal of their cases?

A. To a certain extent.

Q. So apart from the delay that is caused by the staff, it is also caused by pleaders and parties?

A. Yes.

Q. How many cases do you think a judge there can decide in a month? Do you think that the average is 30?

A. Yes.

Q. Average in the Punjab is 12 or 13.

A. But it is very difficult to do 30 Delhi contested cases.

Q. Do you think that the present staff is capable of doing the Delhi case work?

A. I want the same staff.

Q. Well what is your view with regard to the proposal to raise the appellate powers of the district judge from Rs. 5,000 to Rs. 7,500?

A. I think it will add to his difficulties. He shall have to do more work.

Q. But do you think that it will do any harm?

A. In most cases it will do no harm.

Q. So you will not object to it?

A. No.

Q. Perhaps you will not agree to the remarks made by an Hon'ble Member of the Punjab Legislative Council that really better justice is done in the High Court than can possibly be done in the court of the district judge. He says that in the High Court first appeals are some times heard for six days or three days or four days and they sometimes take as many as between seven and twenty-one days, that in a district court it is impossible to go into all the questions of facts, that the district court is a final authority on questions of facts and that the High Court cannot interfere if there is any error in the decision of the case on points of facts, and that therefore the decision of the district court will become absolutely final on points of facts, that in the High Court a longer time is taken than is taken in a district court and that though speedy justice can be had, in the district court, it will be injustice.

A. I do not agree.

Q. Then he puts in another reason that better justice is done in the High Court, because both the Hon'ble Judges of the High Court and the members of the bar have access to better libraries.

A. I do not think that lawyers practising in district courts have not got very good libraries. I do admit one little thing and that is that occasionally we may have a district judge of rather peevish temper. He would not be so tolerant as a Judge of the High Court.

Q. Do you regard this extension of powers as a retrograde measure?

A. I do not think so.

Q. Do you think that, as a rule, the district judges are hasty and impatient? Have you seen any district judge at Delhi during the last ten years who was hasty and impatient?

A. I do not think so

Q. Do you agree that judges of the High Court are " infinitely abler and more patient than the district judges "?

A. Judges of the High Court are certainly more experienced, but a district judge may be abler than a Judge of the High Court.

Q. You do not think that delay is a denial of justice?

A. Well I do certainly consider that the actual sacrifice of justice for speed is a worse disease.

Q. Would you rather have appeals go straight to High Court and not to the district court?

A. I do not think so.

Q. What do you think is a good percentage for a judge in appeals being accepted by the High Court? If 5 per cent. of the appeals are successful against his judgment, do you think he is a high class of officer?

A. I think so.

Q. If I tell you 7 per cent. is the amount of appeal accepted from the district judges on appeal, you don't think it could be much improved on?

A. I do not think.

Q. In Delhi do you think it practical to have this " day to day " hearing of cases put down to a particular day?

A. Yes. You break the back bone of a case by taking it up day by day.

Q. Would it not expedite justice a good deal if the judgment of the Punjab Chief Court on Order 17, Rule 3 was *over-ruled?* 51 P. R. 1915 (29 J. C. 938).

A. Well, as I said before I am not for sacrificing justice in order to give speed to cases. I am not for that at all. But I should think that this judgment is not quite a sound one.

Q. You said you would like local gentlemen appointed as subordinate judges? You think in Delhi the communal difference would not come in. You do not think it is important?

A. It is not so important.

Q. At the same time you would admit that there have been several applications for transfer on communal grounds?

A. I know.

Q. Do you think that district judges are not so able or good as they were 15 or 20 years ago?

A. Well, I do not know. Ideas of people differ and differ at various ages. On the whole I do not think there is much variation.

Q. Would you say there is distinct falling off?

A. I do not think so.

Q. Or distinct improvement?

A. I did not say that.

Q. Do you think it would be right to issue summons of court to witnesses and parties serveable by the parties?

A. None of the courts' powers will be taken away. But additional facilities should be offered to the party to have the witnesses of the opposite party called in. 'Courts will have the same powers to issue summonses and issue warrants for the arrest of absconding witnesses.

Q. Do you not think improvement would be made if there is an order to the effect that if there is a court holiday suddenly declared the parties who were called on that date should be allowed to appear on the following day and not after a long time?

A. I think so. That would be an improvement.

Q. Is there any delay occasionally by appellate courts calling for documents?

A. Sometimes it happens that the appellate courts send for files which are not files in the case, but files of different cases.

Q. You don't think it is necessary to serve a baby minor?

A. I do not think it is necessary. It would be futile.

Colonel Roe.—*Q*. The learned President says that in answer to a claim on a bill of exchange, frivolous pleas are put forward about a non-existent partner at home and that much delay occurs in the disposal of such cases. Truly there must be a very large number of cases on those lines and both parties would be desirous of having the matter expeditiously settled. These matters would be settled if the parties went to arbitration. I think the parties would like to go to a practising lawyer if he commands so much confidence?

A. I don't think throughout my experience they command larger confidence than the present judges.

Q. What I have said is that they can deal with the case in a smaller number of hours or days?

A. Then he would be a man ignorant of the trade customs in the place and of the trade tricks and of the parties' tricks and he will be able to do nothing. That is what I suggested.

Q. It has been said on several other occasions that it would add greatly to the efficient administration of justice if there were more recruitments from the Bar and I would like to have it explained why they should not do this?

A. The obvious answer is that there is not so much of *bonâ fide* litigation in India as there is *malâ fide* litigation. If the defence is *primâ facie* false you find a larger number of pleas in that case.

Q. It comes to this that in a majority of cases there is no desire to expedite justice in this country.

A. Yes, by one of the parties.

Q. One of the parties is certainly dishonest in a majority of cases.

A. I shall just explain. I understand that this particular judge has expressed himself against me. It will be necessary, if I can, to have the case decided by another judge. If I go to my district judge and want the case to be transferred, he says that there is nothing and also says "I absolutely believe in the honesty of my sub-judge. I am not going to transfer the case." Then, if I do not succeed, the judge would be against me all the more. So we try to get the case postponed somehow or other for some months.

Mr. Justice Stuart.—*Q*. I understand your suggestion to be that it is only in commercial centres where rather peculiar conditions prevail that you suggest the appointment of experienced men from the local Bar to be sub-judges. I think you have not suggested anything else.

A. No.

Q. How many adjournments would you usually get in one of these commercial cases? How often have you been brought back to court or asked to come back to court? Is it as often as 50 times?

A. It is difficult to give you the number. It is out of all proportion to the importance of the case.

Q. What is your experience as regards the fixing of dates? Do the judges themselves fix them or do they leave it to their clerks?

A. My experience is that the judges fix the dates themselves.

Q. Then how is it that you get blocked to a certain extent? Surely they must know how much work is before them on a particular day.

A. I am afraid they are not good judges of time.

Q. It may be for 1 or 2 or 3 days. It won't be that you would be continually sending away people on the ground that you could spare no time.

A. It ought not to be so. There is one little thing to be said as regards my own profession. Sometimes the judges may be induced to keep more work in court to facilitate the arrival of missing counsel.

Q. If you leave a small surplus and particularly if you take them the next day it is permissible. But I have seen judges in some places who put on their cause list 10 times the amount of work that they could get through in a day. I have seen a man put down 20 contested cases when he knew he could not possibly decide more than two. I suppose it is not quite as bad as that in the Punjab.

A. It is not as bad as that; but it is bad enough.

The Hon'ble Mr. Justice ABDUL RAOOF, Judge, High Court, Lahore.

Written Statement.

1. If the remedial measures suggested hereafter are given effect to I would suggest the following periods :—

A.

(i) High Courts.

First appeals, 1 year.
Second appeals, 6 months.
Miscellaneous appeals, 4 months.

(ii) District judges' courts.

Original suits, 6 months.
Regular appeals, 3 to 4 months.
Miscellaneous appeals, 2 months.

(iii) Subordinate judges' courts, 1st and 2nd class.

Original suits, between 5 and 6 months.
Appeals, 1½ months.
Small causes, 1½ months.

(iv) Subordinate judges' courts, 3rd and 4th class.

Original suits, 3 months.
Small causes, 1½ months.

B. Claims proceedings in all courts, 3 months.

2. The answer to the first part of the question is in the affirmative. The main causes of the delay are :—

(*a*) Orders for the issue of notice to parties and summonses to witnesses are given without specifying the date by which process fees must be paid in court.

(*b*) On failure of service, orders for the issue of fresh processes are given without ascertaining the cause of the failure of the service and fixing the responsibility therefor.

(*c*) Documents instead of being accepted either with the plaint or at the first hearing after issues have been settled are accepted at every stage of the case.

(*d*) Applications for the issue of interrogatories, which should be accepted at the earliest stage of the case only, are accepted at a very late stage.

(*e*) Witnesses, who are present in court, are often sent away unexamined on all kinds of inadequate pretexts.

(*f*) Cases are not proceeded with from day to day, and evidence is taken in driblets.

(*g*) Adjournments are granted for the preparation of arguments at all stages even in matters of interlocutory orders.

(*h*) Unnecessary long adjournments are granted when adjournments are unavoidable.

(*i*) Suits are dismissed or restored without adequate reason.

(*j*) The overworking of the judge. He has to face large accumulation of work.

(*k*) On appeals from interlocutory orders the whole record is sent for and the proceedings in the original courts are, therefore, stayed.

(*l*) If a party is a minor proceedings for the appointment of a guardian are protracted for various reasons. The guardian nominated refuses. An adjournment becomes necessary and the party interested is asked to name other guardians.

(*m*) If someone dies a dispute arises for the substitution of his legal representative. An adjournment becomes necessary. Upon the application for the appointment of the legal representative notices are ordered to be sent to various interested parties. A further opportunity is given to the party who wishes to delay the decision of the suit and in the first place wrong addresses are given and at times the process servers are bribed to report that the persons to whom notices were directed were not found at the addresses mentioned.

(*n*) Bad process-serving.

(*o*) Attempts on the part of the parties and pleaders to prolong the case.

8. The remedies suggested are as follows :—

(*a*) Seven days should be the usual time allowed in 2 (*a*).

(*b*) Service on defendants should be by registered post through Post Office. In this connection it will be necessary to arrange with the Post Offices that they would deliver the summonses to the proper persons after due identification by a *lambardar* or other village officials. The judges have already arranged with the Financial Commissioners that the *lambardars* should assist process servers in serving processes in civil cases and it is expected it might improve matters. The parties or their counsel should be held responsible for service on their witnesses. Sub-judges must warn parties that they are responsible for the service of processes and that the court will not issue a second process unless satisfied that the party concerned has used all reasonable effort to secure service by the process serving establishment. It should be the rule that the party or his agent must accompany the process server to find the person mentioned in the process. Sub-judges between the date of issue of processes and the date of hearing should personally satisfy themselves that service is being effectually carried out and not content themselves with looking into the matter only on the date of hearing. Any neglect of duty by the process serving establishment in this matter should be severely dealt with.

(*c*) The courts concerned should guard against items Nos. 2 (*c*) and (*d*).

(*d*) Witnesses should be examined from day to day and should not be sent away unexamined in any case.

(*e*) Appeals from interlocutory orders should be more carefully scrutinized at the preliminary hearing and frivolous appeals should be dismissed without calling for the records.

(*f*) In proceedings relating to the appointment of a guardian *ad litem* the procedure relating to the appointment of a guardian under the Guardians and Wards Act, should be adopted. Under this Act it is necessary to mention the names of all the relatives of the minor. This should be done in the case of the appointment of a guardian *ad litem* also, so that the court may be able to appoint any one of them and if none of them can be appointed an official of the court may be forthwith appointed guardian *ad litem* of the minor.

(*g*) When an application is made for the substitution of the name of the legal representative of a deceased party it should be granted at once without issuing notices subject to all just exceptions. This is being done in the Lahore High Court and in the majority of cases the procedure has proved satisfactory.

(*h*) An attempt on the part of pleaders to obtain unnecessary adjournments should be discouraged and the presiding officers should have strength enough to refuse applications for unnecessary adjournments.

(*i*) With a view to improving process serving the process servers in each district should be distributed among the several sub-judges and in districts where there are more than one sub-judge disposing of the same class of suits the work should be distributed by Ilakas in order that as a rule there may be no necessity for the process-servers in one court to serve processes in the Ilaka allotted to the other court. The system of supplying bicycles to process servers was introduced in this province. It improved the process serving to some extent but not to the extent desired. This matter requires reconsideration.

(*j*) It should be impressed on the courts concerned that the party having the right to begin should state his case before producing his evidence in support of the issues which he is bound to prove. Instructions on these lines have already been issued to the courts concerned.

4. I think the present method of recruitment to the judicial line requires a slight alteration.

(*a*) Recruitment should be made by nomination from amongst practising lawyers with experience of at least three years; or

(*b*) By nomination out of LL.Bs. and competition combined as in the past.

(*c*) The district judges should be recruited from amongst subordinate judges with due regard to seniority and efficiency.

(*d*) From amongst lawyers of at least ten years' experience at the Bar and from members of the Civil Service who have worked as senior sub-judges at least for one year.

(*e*) High Court Judges are to be recruited as at present.

5. In the case of 4 (*a*) no further test is necessary; but in the case of (*b*) the following judicial training is suggested :—

They should receive training under a selected competent sub-judge, attend the court during the trial of a case and watch the proceedings from beginning to the end. Facilities should be afforded to them to acquaint themselves with the working of the office and record room.

6. The answer to this question is in the affirmative. I am opposed to frequent transfers. The conditions in various provinces especially in the Punjab vary. The method of working of various persons also differs. When an officer trains the office to his own way of working and is given to understand the habits and peculiarities of the people of a particular locality he is in a better position to work satisfactorily and expeditiously than a new comer.

7. Under the present system the amount of work which the Judges expect from district judges, sub-judges, 1st and 2nd class and sub-judges 3rd and 4th class is as follows :—

District judges, 84 units in terms of civil appeals.

1 sessions case, 6 civil appeals.

2 criminal appeals, 1 civil appeal.

The standard which is expected from sub-judges is based on the average figures worked out in 1910 which are as under :—

I would propose the following standard :—

(a) District judges, 75 units.
(b) Sub-judges, 1st and 2nd class, 30 cases.
(c) Sub-judges, 3rd and 4th class, 100 cases in a month.

One-fourth should necessarily be contested.

8. My answer is in the affirmative. Parties have to travel long distances and if absence from their places of residence is found inconvenient they invent excuses and avoid service of processes.

Waiting for the members of the Bar engaged in other cases. As a rule practitioners do not confine their practice to a particular court. They go from court to court and so delay occurs. No doubt courts may refuse to wait and may dismiss cases for want of prosecution, but this is bound to cause discontent and unpleasantness and relations between the Bench and the Bar become strained.

9, 10 and 11. In this province the existing jurisdiction is as follows :—

(i) Sub-judges, 1st class, unlimited.
(ii) Sub-judges, 2nd class, not exceeding Rs. 5,000.
(iii) Sub-judges, 3rd class, not exceeding Rs. 2,000.
(iv) Sub-judges, 4th class, not exceeding Rs. 1,000.

At present I am not prepared to suggest any change.

12. In view of the proposal to reduce their present standard of work no change appears to be necessary. Certain senior sub-judges in this province have already been invested with powers to deal with insolvency and cases under the Guardians and Wards Act.

13. In my opinion there are no objections. Only selected ones.

14. I have not formed a favourable opinion of the village courts and *panchayats*. The *panchayat* system was given a trial in the Punjab; but it proved a failure.

15. I am opposed to the proposal of giving to the small cause courts power to try land suits including suits on mortgages. They may be given power to try the following suits :—

Suits for compensation for—

(a) Wrongful arrest, restraint or confinement.
(b) For malicious prosecution.
(c) For libel.
(d) For slander.
(e) For adultery or seduction.
(f) For breach of contract of betrothal or promise of marriage.
(g) For injury to the person in any case not specified in the foregoing clauses.

16. I am not in favour of this proposal.

17. The present class of sub-registrars is not sufficiently qualified to try any class of cases and I am not therefore prepared to support the proposal under the present conditions.

18. I do not think so.

19. At present Letters Patent appeals lie in the following cases :—

(a) From the decision of a single Judge in unclassed suits upto the value of Rs. 1,000.

(*b*) In land suits upto the value of Rs. 500.

(*c*) From orders passed on miscellaneous applications such as applications for stay of execution and injunctions, etc.

(*d*) From orders as to costs.

In my opinion in respect of (*c*) and (*d*) the right of appeal should be curtailed. Appeals from decisions in revisions are not allowed in this High Court.

20. My reply is in the negative.

21. In my opinion the provisions of Order XLI, rule 10 of the Civil Procedure Code should be more freely utilised to second appeals and I am not prepared to accept this suggestion that the appellant should be compelled to deposit the entire decretal amount before he is allowed to appeal.

22. In this High Court this power is systematically exercised.

23. Under the recent rulings of the Lahore High Court the right of application for revision has been very much curtailed. Lately a Full Bench has decided that under section 115 of the Civil Procedure Code no revision should lie against interlocutory orders. I would accept the suggestion that in cases of revision under the Provincial Small Cause Courts Act the decretal amount should be deposited in court before a revision petition is filed.

24. The replies to questions Nos. 2 and 3 will answer this question.

25. I have already made my suggestion to meet such cases. I am opposed to the application of the procedure under section 106 of the Transfer of Property Act to civil suits.

26. I am afraid it will not be possible to adopt materially the English writ and statement of claim in this country. The forms of plaints given in the Civil Procedure Code are generally adhered to. If they are prolix the court has ample power to return them for amendment.

27. I think the directions contained in Orders VII and VIII of the Code of Civil Procedure as regards pleadings are substantially followed in this province.

28. I have already made my suggestions in my reply to question No. 3 about the matter in this question.

29. This is a sound suggestion and I support it. I would further add that all subsequent notices upto the determination of the suit should be served on the pleader of the party. In my opinion greater responsibility should be thrown upon the pleaders in matters of serving notices.

30. I would suggest that the party or his agent should be held responsible for the service of processes and that the court should not issue a second process unless satisfied that the party concerned has used all reasonable effort to secure service by the process serving establishment and that it should be made a rule that the party or his agent must accompany the process server to find out the person mentioned in the process. I would not throw this responsibility on the shoulders of the pleaders in this respect.

31. In all cases in addition to the pleadings questions should be put to the parties or their pleaders upon all matters which are not quite clear from plaints and written statements.

32. They are very much neglected in this province. The provisions of Orders X, XI, and XII of the Civil Procedure Code are quite clear. I suspect that the officers do not act upto the mark in this matter because they are afraid of their inadequate outturn at the close of the month. The proposal to reduce the standard of work required for them will automatically remove this defect.

33. I am not in favour of this suggestion.

34. The answer is in the negative. The attention of the courts should be drawn to the salutary provisions of Order XVI, Rule 16, clause (1) of the Civil Procedure Code.

35. Yes. Much unnecessary and avoidable oral evidence is let in in the courts of this province. I would suggest that the party applying for the summoning

of witnesses should state what a particular witness is going to say. If unnecessary evidence is produced before the court by calling too many unnecessary witnesses the party calling should be made to bear the costs.

36. I agree.

37. This is impracticable.

38. Order XXXVII of the Civil Procedure Code may be extended to cases of money bonds which are in the handwriting of and signed by defendants.

39. The provisions already existing are sufficient to meet such cases.

40. I am not in favour of the suggestion.

41. The answer is already given.

42. I do not think that undue advantage is taken of the practice granting *ex parte* injunctions to any large extent in this province.

43. Some judgments of the courts in this province are unduly long; but I am not prepared to say that this is the case in an appreciable number of cases and it would be dangerous to frame any hard and fast rule in this matter. Order XLI, Rule 31 of the Civil Procedure Code already prescribes that the judgments in the lower appellate courts should state the points for determination which was generally neglected in this province. The attention of the courts has already been drawn to this Order.

44. This is usually done.

45. The dates are generally fixed by the judges themselves.

46. So far as my information goes this is seldom done.

47. Yes. Trials are unduly delayed by the examination of witnesses on commission. The powers of the commissioners should be extended so as to overrule irrelevant and inadmissible questions. I would insist upon writtten interrogatories except by special leave of the judge. I would suggest that pleaders of standing should as a rule be appointed commissioners to take evidence.

48. Applications for adjournments ought to be supported by affidavits. This will probably effect in speeding up work.

49. The reply to this is contained in the replies to questions Nos. 2 and 3.

50. It is done in this province.

51. Yes. The answer to the first part of the question is in the affirmative. The High Court has issued instructions to give precedence to commercial cases over other class of suits.

53. The principle of section 21, Civil Procedure Code, may be extended to execution proceedings.

54. This is a good suggestion and I agree to the proposal.

55. The existing provisions sufficiently protect the rights of a *stranger* purchaser and there will be no harm in modifying the language of section 47, so as to include proceedings taken by a *stranger* purchaser at a court sale to obtain delivery of the property which he has purchased.

56. I am in entire agreement with all the suggestions contained in this question.

57. In my opinion the existing rule is quite sufficient and it will serve no useful purpose to extend the rule laid down in section 66 of the Civil Procedure Code. On the other hand I am afraid that complications might arise if the principle is extended because sometimes real questions of equity arise which may be left to be settled by a separate suit.

58. To effect an alteration of Order XXI, Rules 1 and 2 in the manner suggested in this question is likely to cause inconvenience to litigants who may be living in villages far away from the headquarters where the facilities suggested in the question are not likely to exist.

59. Proviso to Rule 16 of Order XXI of the Civil Procedure Code may be deleted. I see no objection to the suggestion made in the first part of this question.

60. I think that Rule 21 of Order XXI lays down a very salutary rule. Sometimes a decree-holder in order to disgrace and harass the judgment-debtor wishes to have him arrested in spite of the fact that the judgment-debtor may be possessed of considerable property from which the decretal amount may be realised. In my opinion, therefore, Rule 21 should be retained.

61. (*a*) No special notice is necessary. It can easily be made part of the notice of the execution petition in which the substantial relief is asked for.

(*b*) I am not in favour of the entire deletion of Order XXI, Rule 22 of the Civil Procedure Code.

62. Power may be given to the court to stay execution on the judgment-debtor giving security for the entire decretal amount, and the wording may be so changed as to give greater discretion to the court.

63. I am in entire agreement with the suggestion made in this question.

64. I consider it a good suggestion that the writs of attachment and sale proclamation should be simultaneously issued in all suits. But I am not in favour of the suggestion that notice of execution petition should be served on the vakil and his refusal to receive notice should be treated as tantamount to refusal by the party. The issue of notice at the *registered* address would be quite sufficient.

65. I do not approve of the suggestion made in this question. I am afraid this will cause endless trouble.

66. No change appears to be necessary in the existing rules relating to the execution of mortgage decrees. According to the present law all persons interested in the mortgaged property are made parties to the mortgage suit and the prior mortgagee or the puisne mortgagee is entitled to set up a mortgage in his favour. I am in favour of the suggestion that the preliminary decree may be done away with and that a personal decree may also be passed at the same time that the mortgage decree is granted in case the amount is not realized from the mortgage property.

67. Yes. Delay is caused in the disposal of execution proceedings by frequent orders saying such proceedings made by appellate courts. If the suggestion already made is accepted and the records are not called for each time an appeal is made the evil will itself disappear. I am not in favour of the suggestion of awarding exemplary compensation in cases in which the courts come to the conclusion that stay of execution proceedings had been obtained on insufficient grounds. On an application being made for that purpose it is open to a court to grant the application for stay or not.

68. I am in favour of the suggestion made in this question.

69. My experience in this province is that delay does take place in the recovery of the fruits of the decree owing to the present law of insolvency. However, under the present law a penalty is provided to prevent frivolous applications being made.

70. The cases of absconding judgment-debtors are very rare in this province and no remark is necessary.

72. Ordinarily a mortgage deed duly registered should be presumed to be valid and if any body disputes its validity he should be called upon to prove his case.

73. A good deal of trouble and time will be saved if printed paper books of the High Court in a previous litigation are made admissible as secondary evidence in a subsequent case. However, in my opinion much time is not taken in obtaining certified copies.

75. Replies to some of the previous questions will answer this question.

76. Yes.

77. I would apply the same rule as suggested in question No. 76.

79. I am in entire agreement with the suggestions made in this question.

80. I do not accept the general proposition.

81. In my opinion such an enactment is not called for.

82. I am not in favour of enhancement of Court-fees on the ground suggested in this question.

83. There appears to be no justification for making a difference between mortgage deeds and sale deeds and leases. In my opinion sale deeds and leases should also be attested.

86. No.

87. Codification of law is a desirable thing if it can be achieved.

The Hon'ble Mr. Justice ABDUL RAOOF called and examined on Tuesday, the 15th April 1924.

Mr. Justice Stuart.—*Q.* Mr. Justice Raoof, when did you commence practice in Allahabad Bar?

A. Some time in 1888.

Q. You practised there until you became a Judge of the Chief Court here.

A. I officiated for a time in Allahabad also.

Q. I think that all your practice at the Bar has been mostly in Agra and Oudh and you have always been a Judge here.

A. Yes.

Q. In the third page of your note you make some criticisms as to the present practice of service of summons on witnesses.

A. Yes.

Q. If your view is carried out that will necessitate some alteration in the rules of procedure from the High Court here.

A. I have referred in my note to certain circular orders issued from time to time.

Q. The difficulty appears to be that there seem to be certain judicial decisions which directly contradict the rules. There is a reported case No. 51 which absolutely ties the hands of the lower courts.

A. That is not only in this Court but in other High Courts also they have made a rule that when a party makes an application you must summon the witness.

Q. I quite agree with you in principle. But won't you like to have those particular decisions explained or set aside before you can go any further?

A. It will be necessary, when the court would only issue one notice.

Q. Only once?

A. Yes.

Q. I find an actual case. A summons had been served and the witness did not turn up. The court actually did adjourn the case and said to the party calling the witness " As your witness did not turn up you should deposit fees to have him examined on commission " and the defendant said " I shall not." The case was decided against him. He went on appeal and the High Court reversed that decision saying that he should have been given another opportunity to produce the witness. That ruling appears to bind all the subordinate courts in the Punjab. As long as that stands, it is difficult to make an improvement?

A. Yes.

Q. You say it should be made a rule that the party or his agent must accompany the process server to find out the person mentioned in the process. I take it you know that this is the practice in Bengal and Bihar?

A. Yes, to a certain extent in the United Provinces also.

Q. There is no rule about it in the United Provinces.

A. It is the practice.

Q. In my experience it is no use laying down any hard and fast rule because it causes more delay than anything else. The process server refuses to move unless the identifier accompanies him. It leads to no good result. It leads to more fraud than anything else. The so-called identifier never goes to the place at all but remains in the precincts of the court ready to sign a false affidavit that he had been there and in fact we found that there is a trade in identifications in the Small Cause Court, Calcutta and many make a living as false identifiers. We have got a rule at Allahabad that if twice a notice is not served, then the counsel or the party has to put in an affidavit as to what efforts he has been making and if he satisfies the court that really efforts have been made then only the summons is issued a third time.

A. That, to a certain extent, would remedy the thing.

Q. With regard to appeals on interlocutory orders you say that they should be very carefully scrutinized and dismissed if they are frivolous without calling for the records. Will it be possible in the High Court in the Punjab to give precedence to appeals from interlocutory orders in any case?

A. I think it will be possible.

Q. With regard to the recruitment for the judicial service, personally I think that it will be very much better if we select men at about the age of 35 who are getting a good practice. In that case we must pay such men considerably higher?

A. Certainly, to induce them to come.

Q. You must alter also the pension rules; for if they come at 35 and retire at the age of 55 after 20 years service then they will get very inadequate pension?

A. Yes.

Q. Do you think it worth while to appoint judges at a considerably later age, pay them better and give them special pension rules?

A. It is worth trying.

Q. Do you find that in the districts a limited number of pleaders have all the big work with the result that they appear in more than one case in a day and do you find that it causes very great difficulty and delay?

A. Yes.

Q. Why could they not be told that nobody is going to wait for them and that their remedy is to employ a junior to appear for them?

A. Yes. If they are told that they will not be waited for, that will be the necessary result.

Q. If the court dismisses some cases on that ground, it is bound to cause some discontent; but would it not in a very short time improve matters and compel a senior to employ a junior?

A. Yes.

Q. Would it not in your opinion be to the advantage of both the Bar and the public if we take measures to compel them to have a junior?

A. Yes.

Q. Can you find any justification for any man taking up more work than he can do himself, taking fees for it and causing inconvenience to the public? If he has got more work he can very well say " I have other work and I can't take your brief."

A. There are some who do say so.

Q. It is merely due to greed?

A. It is not always greed. When a pleader is in good practice clients insist on engaging him.

Q. After all a counsel cannot be made to take up work he does not want?

A. Yes the counsel must also show some strength.

Q. His weakness is profitable. He can certainly say 'go away.' In Allahabad heaps of men employ juniors. I again want to suggest that the element of personal gain does come in very much. I notice that a junior is not employed unless he is a relative.

A. Well I would not go so far. I agree with the suggestion that some effort might be made to indirectly influence the seniors to employ juniors.

Q. The next point I come to is about revision. You are in favour of the decretal amount being deposited when an application is made under Section 25 of the Provincial Small Cause Court Act.

A. Yes.

Q. I do not know whether we have made ourselves sufficiently clear in our questionnaire —question No. 29, about registration of addresses. I would like you to consider that again. That question was based on an experiment. About three years ago we made an attempt in Allahabad to improve the service of processes in the following manner :—The plaintiff is obliged as soon as he files a plaint to give his registered address and he is not allowed to continue his suit until he has given his address. As soon as you get the defendant in the court you make him to give a registered address and he has got to keep this registered address alive. If he changes his address he must inform the court and all notices are served on him at that address through the Post Office. Is that a good idea?

A. I think it is a very good idea.

Q. Civil courts did not carry it into effect. In the course of our recent inspections we discovered this and we issued strong instructions on the question. Although we extended it to appeals we extended in a very half-hearted manner. All notices will be served on the registered address and we assume that everything that we send reaches him.

A. I have agreed with that suggestion.

Q. And that would meet the case?

A. Yes.

Q. Are you in favour of introducing the procedure under Order 37?

A. Yes.

Q. You say why not add the words bills of exchange, hundi or promissory notes, simple money bonds?

A. Yes.

Q. Have you had to do any inspecting work?

A. No.

Q. Then how are you in a position to know that the subordinate courts really give their mind to the fixing of their own dates?

A. These reports come up before us.

Q. But do they show anything? What I mean to say is that I do not quite see how your statements help in discovering facts like these?

A. Well I must say that the judges who do inspection work go into these things very carefully and write down their notes and these notes come up before all the judges for their consideration.

Q. Do the judges have much to complain about on that point?

A. Not much.

Q. It several times happens that witnesses have to go back without being examined by the court. Are these things also brought to your notice?

A. Yes.

Q. And what do the judges do?

A. They simply make remarks.

Q. Do you not stop the promotion of the judge concerned?

A. It has not come so far.

Q. Well I do not think that mere remarks can do any good in this respect. Some drastic action is necessary. Is the inspection carried on every year?

A. No, not every year. After every three years.

Q. Then the court concerned after it has been caught once may go on doing bad work for the next two years because no one is going to inspect his work. The third year he will be very careful and try to dispose of all cases in a proper manner.

A. Yes.

Q. Perhaps you know that in our High Court everything of this kind must come to the light of the day as soon as it is more than a year old. The court has to put down on the adjourned date " I could not take up the case as I had no time " and then he gets remarks from the English Judge " This is an excuse which I will not accept and if it happens again it will be a serious matter."

A. Yes.

Q. We have also to take into consideration the litigant. We must respect the feelings of the litigant more than the feelings of the judge in certain matters. After all he is the man who has paid his fee and it is absolutely necessary that the judge does his work properly.

A. Yes.

Q. Well I will not touch all these suggestions because a very large number of them, in fact, the majority of them, are such which have already been considered by your court and which we have already approved.

A. Yes.

Q. Can you tell me now please, how the administrative work is distributed in the Punjab High Court? Do returns of delays, etc., go to the Chief Justice?

A. Yes they invariably go to the Chief Justice?

Q. And to nobody else?

A. Sometimes the Chief Justice brings important matters to the notice of all the judges in meetings which are held every month?

Q. Do you have a meeting once a month?

A. Yes.

Q. Everything which is important is put up for consideration in these meetings?

A. Yes. We hold these meetings regularly once a month and for the whole day. All the details are settled in these meetings.

Q. Do you think that it will be an advantage if you keep a proper order sheet? I understand you have no order sheet here.

A. Order sheets are provided but they are very indifferently kept up.

Q. I think there is only fard-i-ahkám. It is merely a statement of dates. It does not show what happened on different dates.

A. Yes.

Q. It does not give any thing which is of any use. They simply put down 3rd July—adjourned to 7th August—7th August adjourned to 15th September. The sheet does not show why the case is adjourned.

A. It is not so satisfactory as we have got in our province.

Q. Do you think that it will be a good thing if proper order sheets are kept?

A. Yes, a very good thing.

Q. So you are in favour of introducing order sheets?

A. Yes. In the United Provinces the court puts down the date to which the case is adjourned giving reasons of the adjournment, *i.e.*, what has happened on that date, what is the cause of adjournment and so on. I would be very much in favour of that.

Q. Do you think that will cause great improvement?

A. Yes.

Q. Do you think that district judges in the Punjab have time to exercise proper supervision over subordinate courts?

A. I am not in a position to answer that question.

Q. I find that this varies very much in different provinces. In our province they have not sufficient time to exercise supervision and in Bengal too they have got no time to do this work.

A. Well there is a suggestion in the questionnaire that some of the district judges' work may be taken away.

Q. Well what do you think of the suggestion that court inspectors should be appointed who would take away a good deal of the routine and inspection work from the High Court and the district judges leaving them only to do higher inspection work. The officer would be of the qualifications of a district judge and would go round to all courts. Take the case of the Ferozepore court. He would go to Ferozepore, make a careful inspection of everything and the inspection would last for a week. He would write down his notes and they would come up to the Judges of the High Court? Do you not think that it would save time and money and the results would be far better. I do not want to make the inspector the final authority, the final authority would the High Court Judges. He will only be a reporting authority?

A. Yes, but if you make the work of the district judges a little lighter I think that would secure better results. I do not want that an officer on whom there is no control should be entrusted with this work.

Q. No he will be under the High Court and he would probably be a senior district judge?

A. You want to create a permanent post?

Q. Yes, just as there are Deputy Inspectors of Police. They inspect offices of Superintendents of Police.

A. I do not think that will work.

Q. You want the work of the district judge to be made a little lighter?

A. Yes. The High Court will have more control over the district judge than over the inspector and the Judge would be responsible to the High Court.

Q. In your opinion would it be possible or desirable to create benches in each division which will be manned by two specially selected and competent subordinate judges who would hear all appeals in suits of a valuation of Rs. 1,000 and under in the divisions, thus relieving the district judge of his present work, and that those decisions should be final, both on law and facts, if the judges be unanimous? If they differ, an appeal would lie to the High Court and they would further have power to state a case on any point of law. Do you think that would work? It would relieve the High Court of a mass of second appeals and it would bring about a very speedy disposal of all suits of a thousand rupees and under.

A. I am afraid the public won't accept. They have better confidence in the High Court than in these benches.

Q. Why do you say that? When a litigant goes into court for the first time, has he got in the back of his head any desire to appeal to the High Court? It is only when he loses the case that he thinks of appealing. What do you mean by public opinion—the man who was defeated in the lower court?

A. If an intelligent litigant loses a case, he feels confident that he would get better justice in a High Court.

Q. Do you think that his feelings would change in those matters if we create an efficient tribunal?

A. What advantage will you derive from it.

Q. You would not have cases held up for 5 years?

A. I suppose you suggest a sort of a compromise as there is a cry that the number of judges should be decreased. Instead of increasing the number of judges in the higher tribunal, you want to decrease the number of judges.

Q. Under the present system you get a suit. The subordinate judge would decide it in a year or 9 months. The appeal goes up to the High Court, and it will go on for hearing 2½ years afterwards. Again the man will take a Letters Patent appeal.

Bakshi Tek Chand.—Is that so with regard to cases below Rs. 1,000 in value? Do such second appeals take 2½ or 5 years in the Lahore High Court?

A. They go before single Benches and are disposed of in 3 or 4 months. We have come to the end of the single Bench work.

Mr. Justice Stuart.—*Q.* I understand your single judge jurisdiction is Rs. 500. There won't be a Letters Patent appeal if it went before a bench. Certainly more than half the time will be saved by this method, would it not? That would be a great advantage and a great deal of expense might be saved.

A. There may be a saving of expense.

Q. Of course the saving of time and saving of money are the two things the Committee is trying to effect.

A. The saving of time depends on the confidence of the public.

Q. In Allahabad when we put this idea, it was welcomed by the leading Indian members of the Chambers of Commerce and many leading members of the Bar.

A. The difficulty arises when you begin to suggest that there ought to be no appeal.

Q. There is an appeal and a very good appeal.

A. You said that the decision would be final.

Q. They have the division Bench and they have one appeal.

A. They are going to do that work only.

Q. Nothing else.

A. I am afraid you won't find sufficient work for them.

Q. I would put down a standard which a sort of bench should get through and just arrange sufficient benches to do the work. I won't have a bench for each district.

A. I don't think the litigant will have the same confidence as he has in the High Court. There are litigants who even after losing appeals are satisfied.

Q. I think you remember that you drafted a will on behalf of the late Maharaja of Nanpara and you were called as a witness in a case in connection with it. You were called on to prove the will which was a very simple matter. It should have taken half an hour. I think you were cross-examined as to whether the Raja did not understand the contents of the will. It was suggested that the words of the will had been put into his mouth, and that he was not of sound disposing mind. I want you to tell the Committee how long you were in the witness box to be examined on these few points?

A. 10 days were spent in examination-in-chief and 20 days in cross-examination.

Q. Were you examined on commission?

A. No. In court.

Q. What do you think was the right time that ought to have been spent on this?

A. Two or three days time is quite enough. The court thought that it was a big case and probably would take years and the judge was very strict in allowing and disallowing questions in the beginning of the case. One of the parties put in a petition before the Judicial Commissioner that difficulties were being placed in his way in the trial of the case, that it was a very big case and that very able counsel had been engaged for the case. Without considering the whole thing, the Judicial Commissioner wrote a note pointing out that when parties are represented by very able counsel, the court ought not to interfere. That seems to me to be the reason why it took such a long time for my examination.

Q. May I ask you whether both the counsel in examination-in-chief and in cross-examination were drawing their fees by the day?

A. Yes.

Q. I suggest that most counsel engaged in the Nanpara case made a competence for life.

A. Yes. That was so.

Q. It was very much to the advantage of everybody except the people paying the bills and yourself that your examination should last 30 days.

A. I felt it myself at the time.

Colonel Roe.—*Q.* Don't you think the result of a case depends very much on the personnel of the judge because a case is decided in one way before one judge and in another way before another judge?

A. I have not probed into the litigants so far.

Q. May I enquire what this competency is based on? Yesterday I got 3 copies of the Punjab Law Records and I took note of the results of appeals to Privy Council. There was one appeal in 1915 to the Privy Council in which the judgment of the learned Judges was amended. In 1916 there was one appeal which was dismissed. In 1917 there were 2 appeals and in both of them their Lordships would humbly advise His Majesty to set aside the judgments of the High Court.

A. The Privy Council set aside their own judgments afterwards.

Chairman.—*Q.* I quite agree that there is a great deal of personal equation and it is a very foolish judge who does not contemplate the possibility of being wrong himself. I remember a young vakil in Calcutta appeared before me and moved an application in revision. I said to him—what ground is there here for revision? He said the law is quite wrong. I said—I have been wrong many times and sometimes been upheld by the court of appeal. That really is the point. From the mere fact that the High Court interferes in second appeals it does not follow that there would have been a failure of justice. The number of interference would appear to be twenty per cent. or less.

A. Yes.

Q. You have to have some system of getting a finality and if you keep a small dispute going on for a year and a half in the original court and two or three months at least, rather much longer, in the first appeal then it takes another couple of years in the second appeal. Litigation is protracted for years and years and under our present system of Letters Patent appeal it sometimes happens that smaller cases get the greater number of appeals. Dealing with litigation about immoveable property of small value do you think it ought to be left exactly where it is? It is a very serious question. It is no good cursing a subordinate judge for granting three or four adjournments if as a matter of fact the policy of the law is to allow a case to go on for years and years. What do you think?

A. Then your suggestion is that the right of appeal should be curtailed.

Q. What I mean is that you ought to give a man a final decision without putting him through so many processes. Whether you can simply curtail the right of second appeal is another matter but do you not think that some method should be tried if necessary to strengthen the court of appeal and to give a man one trial and one good appeal? That is the ideal which ought not to be abandoned.

A. Of course there must be some finality, if the object is to curtail the time and the worry. I think time is now advanced and the period of limitation can be curtailed. In some cases the limitation is too long.

Bakshi Tek Chand.—*Q.* Is the period of limitation too long, it is ninety days for the High Court and thirty days for the District Judge's court?

A. Ninety days are not necessary, for example, in second appeal. It is a question of law, you go to your counsel and he at once sees it.

Mr. Justice Stuart.—*Q.* I want to make it quite clear. We have not the slightest desire to deprive a man of the right of appeal. We consider that it will be a bench of absolutely efficient subordinate judges and I would not have the slightest objection, if I was unfortunately a litigant, to take an appeal to such a bench. It would be a very serious reflection on the provincial judiciary and to my mind an unwarranted one if you suggest that such a bench would not be efficient.

A. The only difference that I see is that you want to locate the bench in the district instead of in the High Court.

Bakshi Tek Chand.—Q. During your experience as judge of the Chief Court, Punjab, and the High Court, Lahore, have you come across any cases in which one witness has been examined for thirty days? Do you not find from the deposition of witnesses that the cross-examination in this province is not unduly lengthy as a rule?

A. There was no case in which there was such unduly long cross-examination.

Q. With regard to fees of lawyers here the practice is not that they have daily fee but are they not paid for the whole case both in the lower court and in the High Court?

A. In the High Court I know there are no daily fees.

Q. But it is so in the lower court also. Is'nt it?

A. I have no personal experience but I have heard it.

Q. With regard to execution of decrees can you suggest any improvement in law that decrees might be executed expeditiously? Is the insolvency law abused by fraudulent judgment debtors to frustrate the realisation of the decree?

A. That is my impression.

Q. Would you like to make the insolvency law more stringent?

A. Yes.

Q. Well what is your impression with regard to execution of decrees relating to agricultural lands? Have you formed any idea on that point?

A. Yes I have come across cases in which the judgment debtor does possess sufficient land to pay off the decree that stands against him, but he comes forward with the objection that it is agricultural land and can not be sold.

Q. And you want the law to be modified to an extent as would not protect such judgment debtor?

A. With the permission of the President I would like to suggest one thing which appears to me to be very important. Under Order 21, Rule 58 a claim is preferred or objection is put forward to the attachment of the property. What is the necessity of allowing that in the execution proceedings. My experience is that in 99 cases out of 100 the claimant eventually comes to court and files a regular suit. I do not see why this should be allowed in execution proceedings because it simply causes unnecessary and avoidable delay.

Q. So your suggestion is that regular suit should not be allowed?

A. No, claim stage should be abolished.

Sir T. Desika Achariyar.—Q. Do you not think that it is necessary to give the purchaser some information with reference to his claim? Is it not necessary that every purchaser should have all the information with regard to his claim? As far as I understand by the sale of property, attachment of property and so on as set down in the execution chapter of the Civil Procedure Code, it is intended that the interests of the party who is in possession should be taken into consideration.

A. I quite see that. Your intention may be very laudable, but invariably objections are made for the purpose of delaying execution.

Bakshi Tek Chand.—Q. With regard to recruitment of subordinate judiciary, are you in favour of competitive examination?

A. Yes. Selection and competitive examination combined. Selection should take place from among the members of the Bar.

Q. That is what I wanted to make clear. Would you have only LL.Bs. for the examination or every one?

A. Only LL.Bs.. I would not make examination obligatory for those practising lawyers in district courts who have acquired great experience, but those only who are quite new and have no experience at all. They would appear in the examination.

Q. And you will have no other system of recruitment?

A. No.

Q. As regards the High Court, you have had experience of two High Courts; do you not think that the outturn of work here is much larger than in the sister provinces?

A. I am not in a position to answer that question.

Mr. Justice Stuart.—That is a question of figures. I certainly do not want to enter into a competition, and you can ascertain that from figures.

A. There is another point with regard to execution of decrees for money. There is some suggestion underlying these rules that attachment should be allowed before judgment more often than it is done now. Attachment should be allowed before judgment and when the judgment is passed the decree should be executed then and there. I was not quite confident and therefore I did not put it down.

Bakhshi Tek Chand.—*Q*. With regard to second appeals, do you think that the High Court here makes free use of Order 41, Rule 11? For instance don't you think that more appeals are rejected under Order 41, Rule 11, here than in Allahabad?

A. Here Order 41, Rule 11, is not exactly applied, but the procedure applied comes to that. In Allahabad they have made it a rule that all cases must come under Order 41, Rule 11, and I think same is the case in Calcutta. But here the appeal comes up for preliminary hearing and it is not under Order 41, Rule 11.

Q. I understand in Allahabad they have got two judges for doing this work the whole day but here we have not got a separate bench for dealing with these cases.

A. Here the whole thing is decided within half an hour. The judges sit at 10-30 and finish the whole thing at 11 o'clock. There they hear these appeals in a regular manner and deliver judgments.

Mr. Justice Stuart.—But we do not deliver judgments. We dispose of these cases summarily. If it is admitted, we say the appeal will be heard, but when it is not admitted, then it is dismissed summarily.

A. The only difference is that the respondent is not sent for otherwise the appeal is treated as a regular appeal.

Chairman—*Q*. Here in the Punjab, when an appeal is admitted under Order 41, Rule 11, it goes on for two years. Do you not often get a case like this that the matter is entirely concluded by findings of facts and is for this reason dismissed?

A. No.

Q. If it is to be dismissed at the end after two years, why should it not be dismissed in the beginning?

A. But it is regularly heard.

Bakhshi Tek Chand.—*Q*. So you are not in favour of curtailing the right of second appeal?

A. No. I have said so. I have explained all that.

DEWAN SOM NATH, Additional Sessions Judge, Sialkot.

Written statement.

A. *(i) High Courts.*

Lahore High Court tries very few original suits, so far as is known to me.

First appeals, about 18 months.

Second appeals, 6 to 9 months.

Miscellaneous appeals, 6 to 9 months.

(ii) District and Sub Courts.

(*a*) Title suits, 6 to 9 months.

(*b*) Money (and commercial) suits, 3 to 4 months.

Regular appeals, 2 to 3 months.

Civil miscellaneous appeals against orders, 1 month.

Small causes, 2 weeks.

(iii) Courts of district munsifs. (Sub-judges in the Punjab with lower powers.)

(*a*) Title suits, 4 to 6 months.

(*b*), (*c*), (*d*) Money, rent and other suits, 2 to 4 months.

Small causes, 2 weeks.

B. (*i*) About 3 weeks.

C. No opinion.

2. The period actually taken is very excessive at present.

Chief causes.

Appeals.—Heavy pending files.

Original suits—

(*i*) Heavy pending files.

(*ii*) Non-service on defendants in the first instance.

(*iii*) Delay in service on witnesses of the parties, resulting in too frequent adjournments and preventing the courts from adopting "day to day" trials.

(*iv*) Taking advantage unduly of the Procedure.

3. *Remedies suggested.*

(*i*) *Witnesses.*—It is not correct to say that the defendants alone are to blame in this respect. My experience is that the plaintiffs take a long time in closing their cases. In most of the cases, the onus to prove majority of the issues lies on the plaintiffs. No serious attempt is made to have their witnesses served for the hearing fixed, but some witnesses are intentionally kept away, in order to afford to the plaintiffs more than one opportunity to complete their cases. Deficiency in evidence is made up as the case proceeds, by citing further witnesses for adjourned hearings. This is due to non-preparation of the cases in the earlier stages and sometimes for want of knowledge of the substance of the evidence of the witnesses cited in the first instance. This is particularly true in commercial suits

Later on defendants do naturally take as much time as they can.

Non-service on witnesses makes it impossible to proceed from day to day, which I take to mean that a case when taken up should be heard to a finish. It is not possible to close a case at present if the party whose witnesses are not in attendance, has paid the process fees within the fixed time and has ostensibly done his best to have his witnesses served.

if a long enough date is given for hearing of evidence and summonses are sent out again and again during the interval and the parties compelled, on pain of their cases being closed, to keep their witnesses in attendance, it would be possible to take up cases from day to day, thus expediting their disposal and decreasing the cost of litigation. I am sure that in majority of cases parties can have their witnesses served, wherever they may be, if so inclined. No one would dare to produce a witness whom he had not first consulted out of court and the witnesses are in the secret of this non-service pretext.

I am therefore of opinion that the parties should be made responsible not only for service on the witnesses but also for keeping them in attendance on the date fixed. The rule at present obtaining is that the responsibility for service is on the courts and the parties are only called upon to help the courts. This should be reversed. The courts should help and the responsibility should be of the parties.

The presiding officers when fixing the date for hearing of a case, should (*a*) give a date up to which process fees, diet money and a list of witnesses should be put in, (*b*) fix another date on which summonses should be ready in court and (*c*) on this date the parties should put in an appearance to take away the summonses along with a process-server for service on local witnesses. If some witnesses are not served, another application should be made with process-fees, etc., and the court should fix another date when summonses can be taken out again. This should continue with sufficient rapidity, till all local witnesses have been served. If some witnesses are really inclined to avoid service, application should be made to procure their attendance under compulsion. If parties are afraid that some witnesses, though served, will not put in an appearance on the date fixed, and the court is satisfied, on an affidavit or otherwise, about the reality of this fear, security for attendance of such witnesses should be taken or they might even be arrested before hearing.

As regards witnesses in outlying tahsils or other districts, the summonses should be sent on the date fixed in this behalf. A date reasonably sufficient should be entered on the summonses for return thereof. The courts receiving these summonses should return the summonses, so as to reach the issuing court before the date so fixed. The parties or their agents should appear in courts on those dates and if their witnesses are discovered not to have been served, they should apply for fresh summonses and then must arrange with people in the tahsils or other districts to have their witnesses served. I feel that it will be difficult to follow this procedure to start with, but as times advance, agencies might spring up everywhere to help outside litigants to have their witnesses served.

Some more process-servers shall have to be employed by the Government and attached to different courts. In the Punjab the officials attached to subordinate courts and in the nazarat department are insufficient to see to the service beforehand. The courts in heavy districts and tahsils are generally overworked and have barely time to look into this matter effectively. The number of officials shall have to be increased. The parties may have to incur some extra expense. The process-fees may be increased, which will deter the parties from calling unnecessary witnesses. However all this extra expense shall be nothing in comparison with the benefit accruing on the speedy disposal of suits.

(*ii*) Process-servers should be punished very severely, if found dishonest or neglectful.

(*iii*) Non-service on defendants causes delay in some cases. There is always an attempt to settle disputes out of court. Hence when a plaintiff brings his suit, defendant knows about it. He takes precautions to evade service, as long as possible, unless plaintiff is active. If active, defendants can be served early enough in majority of the cases.

(*iv*) As for delay in execution proceedings, if sufficient attention is paid to this work no undue delay is caused. The delay only occurs in those cases in which the judgment-debtor is resolved neither to pay nor to allow his property to be sold. Alienations are made in anticipation of the expected decrees. These are bogus in most cases. As soon as execution of a decree is sued out, all sorts of objections by pseudo alienees, sons, relatives, etc., are put forward from time to time. If these objections are rejected declaratory suits of different types, which cost very little in stamp duty, are brought. The execution proceedings are stayed and the decree-holder has to fight it out in another court. It takes years and years at times. If the courts directing stay of execution are empowered to call upon the objector plaintiff to furnish substantial security for satisfaction of the decree, or appoint a receiver for the property involved, before staying the progress of the execution, this difficulty would cease to an appreciable degree. Of course the courts will exercise their discretion, for some objections are genuine and the orders need not be so stringent in those cases.

The increase of stamp duty on suits arising out of claims and objections during execution proceedings would deter the objectors and claimants from filing fictitious suits and at the same time would prevent the decree-holders from harassing innocent parties.

(*v*) The district judge receives history sheets of 6 oldest pending cases quarterly from all subordinate courts. This number should preferably be increased to 18 or more. In estimating the propriety of the outturn of subordinate courts, the disposal of oldest cases should be specially scrutinized. The courts must be called upon to pay special attention to those cases, to avoid the stigma that old and difficult cases are not touched and outturn is made good by disposal of simpler new cases.

(*vi*) Sometimes cases are brought in which hundreds of witnesses are examined by the parties. For these cases special judges should be appointed, so that the work of the ordinary courts is not unhinged.

(*vii*) It must be brought home to the various Bar Associations that they should watch that no member of their honourable profession should help the litigants in unnecessarily getting the trial of cases protracted. The district judges should find out if any subordinate judges shirk work or are lazy. Black sheep there are everywhere and it should be the duty of all sane persons to put them straight, on pain of exposure and punishment.

Our procedure and statutory law is mostly borrowed from Laws in England. I have reason to believe that there is not so much petty litigation in England. I do not know how the disposal of suits and proceedings are expedited there. It may be expensive and difficult to adopt the same procedure in India for disposal of suits of small value, but there is no reason why it should not be adopted in bigger districts at the headquarters for suits of bigger value.

4. No.

5. The munsifs or lowest grade sub-judges might be attached to superior graded courts for sometime and should in the beginning be posted to lighter tahsils or districts, where the work is neither heavy nor complicated.

6. Yes, if transfers are after very short periods.

7. *Vide* answer to question 3 (*v*). The outturn of officers in different places and of different grades cannot be same. However a fair outturn at a particular place can be easily ascertained by reference to the work done by officers, who are known to be hardworking and efficient.

8. Some time is wasted at present by waiting for counsel. However, if day to day procedure is adopted uniformly by all courts, this difficulty is likely to vanish.

9 and 10. The purchasing value of money has become less. In my opinion the powers of appellate and other courts should be doubled.

11. We have no munsifs now in this province. There are sub-judges exercising different powers. The more capable an officer the more should be his power and pay.

12 and 13. Probate and Administration, Insolvency, Guardians and Ward and Land Acquisition cases should be transferred in districts, where appellate work in the district judges' court is heavy, to the courts of the senior-most

sub-judge or sub-judges, who in such stations must be senior and efficient officers. The district judges must have time to devote to the civil appeals. I am of opinion that in certain classes of cases, there need not be any second appeals to the High Court and the district judges should have therefore more time to consider their judgments and law points involved therein.

The public I think will have no objection to this transfer of work, provided that competent sub-judges are selected.

14. I am against such exclusive jurisdiction. Men have no confidence in such honorary workers in this province, who have always some local bias or believed to have such.

15. I would not enhance the scope of the jurisdiction of small cause court judges in this province at present.

16. Summary procedure might be adopted in suits based on negotiable instruments, registered bonds for money, registered simple mortgage bonds and in suits for ejectment of tenants by landlords in cases in which tenancy has been determined or forfeited.

These powers should only be exercisable by specially selected officers, in special districts and up to a certain limit of money or value.

17. If well qualified sub-registrars are available, then they might be invested with civil powers, up to a limit of Rs. 500 or even more, for trial of money suits. This will relieve congestion in the courts of stipendiary civil judges and parties may in certain cases have their cases settled nearer home.

18. I would allow one appeal in all suits except small causes. I do not think it advisable to disallow first appeals in cases in which such appeals are admissible at present.

19. No opinion.

20. There are many frivolous second appeals preferred to the High Court. I would disallow all second appeals (*i*) in money suits up to Rs. 2,000, (*ii*) and in all other suits up to Rs. 1,000 or less. The right of second appeal in such suits should be restricted on the same principles as right to appeal to the Privy Council is from the judgments of the High Court.

21. Deposit of decretal amount as a condition precedent in second appeals would work hardship. Substantial security may be insisted upon.

22. The higher courts can exercise vigilance so that provisions of Order 41, Rule 11, Civil Procedure Code, are acted upon.

23. My reply to the first portion of this question is in the affirmative. I also agree with the suggestion in (1) and (2) except that in case of (1) substantial security instead of deposit in cash should be required before revision can be presented.

24. I would not interfere with the procedure to any great extent. In this memorandum I have referred to the slight modifications that may be made to expedite disposal. As for economy, it is not possible to touch the stamp duty and the prescribed fees of counsel allowed by rules. Day to day trials would obviate the necessity of paying large sums to witnesses on adjourned hearings. Strict supervision and better pay will relieve the litigants from such expenses as are notoriously incurred in bribing low officials.

Probably translation and printing of records in the High Court would become unnecessary, if the courts write legibly and keep English records. In this connection I may point out that I have never understood the necessity of English and vernacular records of evidence in present times. The Indian judges can understand what the witnesses state very well and my experience is that the reader only goes on translating what the presiding officer writes. The reading over of statements in the subordinate courts is seldom resorted to, in the proper sense of the term. If instead of a reader, a typist or a stenotypist is attached to each important court, that would expedite disposal and allow the presiding officer time to understand the evidence more intelligently and clear up obscure points by putting questions to witnesses.

25. I have referred to this point before. I do not think the application of procedure under section 106, Transfer of Property Act, would be advisable to civil suits.

26. The forms given in Civil Procedure Code are not strictly adhered to. However this deviation is not serious. The difficulty arises when the language of the pleas is cryptical and capable of more than one construction. Penalty must be return and very heavy costs.

27. Pleas are often indefinite and at times intentionally obscure. However these things can be cleared up by intelligent examination of the parties and their counsel before frame of issues, unless the plaint and written statements are hopelessly unworkable.

28. If Post Office is used for service, the power to do mischief will pass into the hands of postal peons. The courts may be able to control process-servers, but will find it infinitely more difficult to deal with postal peons, serving under a different department.

Village officials cannot be wholly depended upon to effect service. Rules permit, rather make it incumbent, on the process-servers to take the help of village officials.

29. Yes, after the parties had once appeared, they should furnish registered addresses, which they can have altered later on, if necessary.

30. This would cause trouble. I have given my suggestion before in this behalf. Things should be done in court, under its own eye or under the eyes of superior officials attached to a court.

31. None. The procedure prescribed is very exhaustive.

32. Yes, neglected or perfunctorily observed. Unpreparedness of counsel of their cases in earlier stages or haste of presiding officers. Remedy is observance of strictness by courts and vigilance by appellate courts.

33. I agree with the proposal and the suggestion.

34. I have referred to this point before.

35. Sometimes unnecessary and avoidable evidence is let in in courts. The parties may be asked to give a list of witnesses and the purpose for which their evidence is required. However I am very diffident, if this would mend matters. The courts will find it difficult to decide beforehand into the usefulness or otherwise of the witnesses intended to be produced. Again parties may bring any number of witnesses along with them. The only remedy appears to me to disallow costs of all such witnesses; who are cited but not examined or whose evidence in the end is found to have been brought on record uselessly or unnecessarily. Even the counsels' fees allowable to a party, guilty of such a conduct, can be cut down.

36. I agree with the suggestion.

37. The courts can stop unnecessary and irrelevant questions. The suggestion about time limit does not appeal to me.

38. To suits on registered bonds and registered simple mortgages.

39. No opinion. In my opinion all co-owners and joint-Hindu family members should be on record.

40. No.

41. There is some difficulty. I agree with the suggestion made in the question.

42. Not much.

43. Not very long. It does not cause any appreciable delay. Writing of long and short judgments is a habit.

44. Yes.

45. Yes.

46. They are consulted, but estimates generally prove wrong.

47. Not by length of examination, but by attempts to get commissions issued to witnesses all over British India and sometimes out of India.

48. Very few applications for adjournments are made by the parties, unless it be for want of service on witnesses. Sometimes counsel make applications, in agreement with the counsel opposing. These are genuine. These should only be granted, if witnesses can be informed of the adjourned date and the party applying should be made liable for all costs incurred. These must further be made sufficiently early, so as to enable the court to fix some other case on that date or dates.

49. I have referred to this point before.

50. No opinion.

51. Rules exist for preferential treatment of commercial cases. In commercial towns however, where majority of cases are commercial, the rules can have little effect. I am of opinion that those commercial suits in which property involved is lying without having been disposed of, should be given special preference.

52. None.

53. No opinion to offer.

54. The courts to which decrees are transferred may be invested with the powers proposed. I take it that the court transferring the decrees for execution, shall continue to exercise those powers.

55. In my opinion Section 47, Civil Procedure Code, should be modified as proposed. It is in the fitness of things that a purchaser at a court sale should be worried as little as possible.

56. I do not think any curtailing of period is necessary or modification of any provisions as suggested.

57. I agree with the proposed alteration.

58. I agree with the suggested proposal.

59. I agree with the suggestion made in first paragraph. The transferors' affidavit should contain a clause that the decree had not been satisfied in any way. I do not think there can be any objection to deletion of proviso 2 to Rule 16 of Order 21, Civil Procedure Code. However a provision might be added that if there has been any fraud, misrepresentation, coercion or illegality, the court executing the decree shall have powers to make restitution and award necessary compensation, limited to its pecuniary jurisdiction.

60. I do not think deletion of Order 21, Rule 21, Civil Procedure Code, is necessary. The provision is discretionary. There may be cases in which decrees can be satisfied otherwise than by arrest.

61. (*a*) and (*b*) Notice must be issued if decree is sought to be executed against legal representatives. The other notice is not necessary.

62. I would not touch this provision. It allows sufficient discretion to courts.

63. One notice at the beginning should suffice.

64. A proclamation of intended sale is issued to the judgment-debtor under Order 21, Rule 66, Civil Procedure Code. None else is necessary. In cases of sale of immoveable and specified property the process of attachment and sale proclamation can be simultaneous, but not in cases in which property to be sold is to be ascertained by previous attachment. Notice on vakil, who appeared for the judgment-debtor in the suit, will in my opinion be insufficient. I do not think vakils should be permitted to appear without fresh *vakalatnama* for decree-holders, also.

65. No. The help of village officials may be requisitioned.

66. I would not guarantee such a safe purchase to the auction purchaser as proposed. Under Order 34, Rule 1, Civil Procedure Code, all interested parties are necessarily joined as defendants. However if a plaintiff fails to join all such persons, some clear penalty should be provided.

(*a*) No objection.

(*b*) The suit should not necessarily be dismissed.

(*c*) This is a salutary provision.

(*d*) I do not agree with the suggestion that sales should be deemed to be free from *all* encumbrances. There is no objection to the provision that right of puisne and prior encumbrancers should attach only to the money in court, provided that they have had notice of sale.

(*e*) Not too much time. This is in my opinion necessary.

Final decree is necessary if time is given for payment. Separate personal decree is necessary, at least to adjust the accounts.

67. Not much delay is caused. If substantial security hypothecating immoveable property is required for eventual satisfaction of the decree, execution proceedings would be stayed only in proper cases. Powers of allowing compensation should be given. Compensation should be in money.

68. I have referred to this point before. Deposit of decretal money, substantial security, appointment of receivers and such measures would safeguard all interests.

69. Decree-holders feel when they are sent to the court of the insolvency judge. However, it cannot be helped because as the law stands, they must share rateably along with other creditors, whether the latter have obtained decrees or not. The satisfaction is of course delayed, as the receiver has to satisfy himself about the existence of the debts alleged to be due to other creditors and cannot distribute the assets before. I have no valuable opinion to offer on the points involved.

70. No.

71. No provisions which are unnecessary.

72. If the mortgage bond is registered the onus to prove want of execution lies on the party who on the face of it appears to have executed it. I do not think anything further is required.

73. I agree with the suggestion. A lot of time is wasted in procuring the so called certified copies.

74 and 75. None, except codification of some well known customs.

76. Yes, excepting partition of agricultural land made by revenue officers.

77. Yes.

78. Yes.

79. Yes.

80. I do not agree with the general proposition.

81. I would not modify the present law on the point in view of the circumstances in this country.

82. I would not enhance court-fees any further except in cases arising out of claims and objections during execution proceedings.

83. If unregistered they must be attested in view of illiteracy of people.

84. No suggestion.

85. No.

86. Only authorised publications should be allowed to be cited at argument time. Of course the counsel can base their arguments on principles that may have been enunciated in unauthorised publications.

87. Only customs need or can be codified to a certain extent. However special customs will continue to be pleaded from time to time.

DEWAN SOM NATH, District and Sessions Judge, Sialkot, called and examined on Thursday, the 17th April 1924.

Chairman.—*Q.* You are now District Judge, Sialkot?

A. Yes.

Q. You were also District Judge at Delhi?

A. I was not District Judge, but Senior Sub-Judge and Additional Judge.

Q. When did you go to Delhi?

A. I took over there in June 1920.

Q. So you just came in when there was a lot of difficulty owing to a severe slump in the piece-goods market and also in the rate of exchange?

A. The trouble over rate of exchange cropped up later on. When I went there, there was a great deal of litigation arising out of speculation during the war.

Q. That people had ordered goods from Manchester and when these goods came and bills were presented for payment, they declined to accept them?

A. That trouble came in later on. People had ordered goods from England and had sold them in the market and when the original purchaser had taken up the goods subsequently the market went down and the difficulty arose between the first dealer and the subsequent dealer.

Q. You mean between the buyer and his subsequent purchaser?

A. Yes, there were several buyers.

Q. That is to say they churn contracts?

A. Yes. There was great trouble over this and there was a great rush of litigation to start with.

Q. In Bengal that is perhaps called Bhitar Bazar.

A. Yes.

Q. Well now, apart from that you have been, I take it, in the Provincial Judicial Service for a considerable time?

A. Yes.

Q. And what parts of the Punjab did you go to?

A. I have been at Amritsar, Gurdaspur, Gujranwala, Lyallpore and many other places?

Q. Pretty well all round?

A. I have also been at Attock and Cambellpore on the frontier side.

Q. When you came to Delhi, did you in your other stations have considerable experience of commercial work, that is to say, c.i.f. Contract Bills of Exchange and so on?

A. I had not done a single case of that sort at any place before coming to Delhi.

Q. So when you came to Delhi you had to deal with quite a new sort of work?

A. I believe lawyers there were also not well conversant with this class of work.

Q. So it was new to everybody?

A. Yes.

Q. You have been good enough to give us a very useful memorandum and we are obliged to you for that. Now I would like first of all to refer to the question of service: I see you say that the question of service of witnesses is a great source of trouble. Your suggestion is that at present the responsibility is thrown on the court making the party to assist the court, while it should be that the responsibility should be thrown on the party, the court assisting him?

A. Yes.

Q. Now your view is that apparently the plaintiff will not as a rule call a witness who is really hostile and that he will often keep back that witness in order not to lose his case?

A. Yes, sometimes.

Q. And then in the same way the defendant fights for time, and will delay things by keeping his witnesses absent saying that it is no fault of his?

A. Yes.

Q. Your suggestion is that in substance the man should be required to serve his processes himself? Is that so?

A. With the help of the court.

Q. If the witnesses are absent on the date of hearing, how would you propose to deal with the matter?

A. I have suggested that if he has got reasonable cause for not appearing and he is a very important witness, then the case may be adjourned and if he has no reasonable excuse and the case is not an important one, then the court may be given discretion to close the case. In criminal cases if the accused cites certain witnesses, there is discretion with the court to disallow a certain number of witnesses if it thinks that they are not necessary. I do not see why this discretion should not also be given to civil courts.

Q. Is there anything to prevent applications for adjournment? Do you think that it will be a good thing if on the date of hearing witnesses are told to attend the next hearing without fail and that security should be taken from them?

A. If you pay the diet money to the witnesses for the second hearing there will be no trouble over that. The witnesses will surely attend.

Q. Do you think that will be effective and is that generally followed here?

A. It is generally followed. The whole thing is left in the hands of the reader because the witnesses cannot leave the court unless they have got a discharge and discharge from the court is the diet money for the next hearing.

Q. You mean to say that if that were done witnesses would generally appear?

A. Yes, that is my view. I have been in bigger towns mostly and I have had to deal with intelligent witnesses. In the case of zamindars or agriculturists or other people who are ignorant the payment of diet money is sufficient. There is no need of demanding security because you can fine him.

Q. Even in his absence?

A. Yes, calling on him to explain his conduct. If he does not satisfy you, you can fine him. Security will not give you anything.

Q. Do you think it would be possible to have summonses on witnesses scrutinized before the date of hearing?

A This ought to be done. The difficulty in the Punjab is that the officials attached to the court are very few, and the court possibly cannot do the whole work itself. They have so much to do that it is difficult for them to find time.

Q. Well, will it not be possible, if the summons is returned unserved, at the end of the day to bring it to the notice of the judge so that he may do something in the matter, issue a fresh summons or do something else?

A. Unless the party is also present to help the court on that day, I do not think it will be possible to take any effective action.

Q. Can it not be put on the party to come to the court office and find out within a certain time whether processes have been served or not so that fresh notices may be issued, if necessary, to those who have not been served?

A. A fresh application shall have to be made to the court that a fresh process be issued. It should be the duty of the party to apply once again.

Mr. Justice Stuart.—*Q.* Cannot printed post cards be sent as a safeguard? Supposing a process is issued two months ahead of the date fixed for hearing and it comes back at least five weeks before that date. If it is not served personally do you not think that it would be a good thing if you send a printed post card to the plaintiff or the defendant, as the case may be, that such and such a witness has not been served personally and that he should take the necessary action for his attendance in court on the date fixed?

A. Yes, it will be very convenience to the parties.

Q. Do you think that it will take much time?

A. I think that is done in the High Court. Supposing there are five respondents and two are not served. The Deputy Registrar sends a printed notice to the pleader saying that so and so have not been served and that he should take the necessary steps to arrange for their attendance on the fixed date. There are no witnesses in the High Court, but the same procedure can be followed in the lower courts. If there is a counsel the printed post card may go to him.

Q. To the counsel?

A. Yes.

Q. The difficulty at present, I think, is that the fact that a certain witness or a group of witnesses have not been served is brought to the notice of the court on the date of hearing and not before?

A. Yes, generally the practice is that this matter is brought to the notice of the court on the date of hearing. I have suggested that there should be a date before the actual hearing so that any summonses which have not been served may be brought up to the court and some arrangement made for the issue of fresh summonses.

Q. Don't you think to stay execution at the instance of a man who has lost his suit, is contrary to the intention of the Code?

A. The difficulty is none would purchase the property in the open market.

Q. A judgment-debtor could not complain of that. The person wrongfully claiming to be an alienee could not complain of that. You don't always stay a sale because there is a claim by a third party. Don't you think the real intention of the Code was that the claim should be dealt with summarily, that the matter should go to sale, that the auction purchaser, if he is satisfied with the sale, should buy, and if anybody wants to question the auction purchaser's title he can bring a suit? Can you see any real objection to the sale taking place?

A. No. Not if it is put that way.

Q. You think also that if courts must stay execution, they ought to do it on security?

A. Yes. That might deter false claimants from going to courts at all.

Q. When a man has lost a claim, he must at any rate go out and he should not get any relief after that?

A. Yes. The wrong suit goes on for 3 or 4 years; in the meantime they get benefit of the property. It is very difficult to get the mesne profits.

Q. You think that special judges should be appointed at once for cases in which hundreds of witnesses have to be examined?

A. Yes.

Q. You think that in view of the decline in the purchasing power of money, the powers of appellate and other courts might be doubled?

A. Yes.

Q. And as regards probate and administration, insolvency, guardians and acquisition cases, you think, where the appellate work in the judge's court is heavy, there will be no objection to the senior subordinate judge being entrusted with that?

A. Yes.

Q. You say in certain class of cases there need not be any second appeal to the High Court. What class of cases?

A. Money suits up to a certain value.

Q. However tried?

A. Yes.

Q. Then you would raise that figure of Rs. 500 in the Code to a thousand?

A. I would raise it even up to Rs. 2,000 if the district judge decided.

Q. You say you would not enhance the jurisdiction of the small cause court judges in this province at present. Why is that? By the small cause court judges, do you mean the judges having small cause court powers, or you mean judges of small cause courts in the strict sense?

A. In the latter sense.

Q. You are in favour of introducing summary procedure in negotiable instruments, registered bonds, suits of ejectment of tenants, etc. You think these powers should be exercised by specially selected officers and up to a certain limit?

A. Yes.

Q. When you were at Delhi I do not think you had Order 37?

A. Very recently I was empowered under Order 37. It was only availed of by ordinary persons and not by the commercial people at all.

Q. Is there a great saving of time of the courts in money-lending cases?

A. Yes. It saves a great deal of time.

Q. I have been looking into cases on accepted bills of exchange and I have been rather astonished at the flimsiness of some of the defence. Of course if a man takes a defence and it is not patently bad in law, the thing must go to a hearing and the thing must be heard. Under Order 37, in a great many of the cases which occupied a great deal of time, nobody would dream of giving leave at all except when the cash is put into court?

A. I had only a couple of suits which were purely on accepted drafts. All these suits were on accepted drafts, prices of the goods and the third alternative was damages. I am afraid Order 37 is not applicable to these cases, unless it is possible to pass three decrees.

Q. Well, I am glad you mentioned that, because that might be dealt with. Of course we get exactly the same thing under Order 14 in England but we have no difficulty in that. For instance you can only bring a suit under Order 37 if it is entirely on a negotiable instrument. If a man does not get the leave to defend, there is the end. If he does get leave to defend, then there is nothing to do, but for the plaintiff to go and say: "let me have two alternate claims and let the suit proceed as an ordinary suit." Don't you think that could be easily arranged for?

A. Yes.

Q. Still Order 22 has also to be considered. The plaintiff might be told that if he has not included a cause of action it is gone. There is something which might be done to make Order 37 more useful in such cases?

A. The difficulty is that they cannot depend upon accepted drafts in these cases solely: they ought to make suits alternative in their nature.

Q. Do you think it would be better that the defendant should come in under Order 37 and obtain leave to defent *ex parte* as he now can, or that the plaintiff should come in and ask for summary judgment in default for a reasonable affidavit of defence, or additional leave that defence should be given in the presence of the defendant? Which would you prefer?

A. I would prefer that the defendant should come in the presence of the plaintiff and ask for leave to defend and if the leave is not granted well that finishes the case. If it is granted, then of course it is open to the plaintiff to ask for an amendment.

Chairman.—*Q.* Did you have certain difficulties of this sort? A man sues on an accepted draft. The goods are, let us say, in the godown of the Bank. The goods are deteriorating. The price is falling and the plaintiff wants to minimise the loss by selling for the benefit of everybody. Did you have a lot of people apply to you for an order appointing a receiver to take charge of and sell the goods?

A. Applications were made to me under Order 39, Rule 6, in which there is a provision that the court can order the sale of goods which are likely to deteriorate or for any reason which appears to it to be sufficient. In that case my procedure has always been to appoint a well-known business man who has got experience in piece-goods and find out whether the goods were likely to deteriorate in value and in quality during the time that the suit was likely to last and in all cases I had no occasion to pass an order under Order 39, Rule 6.

Q. If the defendant rejects the goods and refuses to pay the bill, don't you think that when the plaintiff considers that the goods would be better sold, you should not pay very much attention to what the defendant wants?

A. Why should not the plaintiff sell away the goods before coming to court?

Q. The plaintiff thinks that, if he sells the goods, he could no longer stand upon his draft.

I mean a man may be entitled to sell the goods but he could not both sell the goods with his own hands, pocket the proceeds and maintain an action for the full price upon the draft. He could not get it twice over.

A. He might reduce the amount. He brings a suit only for compensation.

Q. Don't you think that in a case of that sort the plaintiff is well entitled to get rid of the difficulties by coming to the court and asking the court to have the goods sold?

A. There is one difficulty. The defendant's objection may be regarding the quality and description of the goods themselves. The objection generally is that the goods in the cases do not correspond with the shipment samples. And, the price fetched would be very little if you sell away the goods. If those goods are sold away before the suit is decided, there might be little left on the record to show whether there was some validity in the objection.

Q. Surely that could be cured by the parties inspecting the goods. If the defendant says that the goods are not up to the sample he might be allowed to inspect the goods some day before they are sold?

A. I should think that it would be a very salutary provision because it helps nobody if the goods are wasted.

Mr. Justice Stuart.—*Q*. How can the defendant take the plea that the cases are not up to the sample when the cases themselves are not opened?

A. I don't know.

Q. He might ask the man to prove that the goods are not up to the sample, but he could not deny because he has never seen them?

A. Yes.

Chairman.—*Q*. Don't you think it undesirable to keep the goods in a speculative market that is falling, falling and falling in order that the defendant who has not seen the goods may have an opportunity of maintaining his plea that the goods are not up to the sample? Don't you think that this part of the Code should be very freely used in every case where it is not clear that to keep the goods would be for the benefit of the parties?

A. My own opinion is the goods should be sold by the court in every case in the presence of respectable persons—business people—who might see whether the goods are according to the description in the contract or according to the sample.

Q. If the defendant has not seen the goods and has not given reasonable particulars of the defects you might give him a very short shift indeed even as regards the question of inspection. It is no part of the business of a court to shift about in order to create dishonest defences.

A. Not at all. Of course we must keep some evidence when the goods are being sold.

Q. The court might allow the defendant a reasonable opportunity of inspection; but whether the defendant keeps evidence or takes evidence or gets any evidence at all this is a matter for the party and the court need not worry itself. If the court is asked to give a reasonable opportunity of inspection before the receiver sells the goods then of course it would be reasonable to allow him some days for that purpose.

A. I had to study this point. It did not strike me to strike out this plea. There was one ruling wherein it was held that the onus to prove that the goods were according to the samples lies on the plaintiff.

Q. You could not strike out the plea but if it was a suit based on a bill of exchange, then the onus would be on the defendant?

A. Then of course the point does not arise except that the man has to show that there was total failure of consideration. If there is anything wrong with the goods he has to pay the bill and then bring an action for damages.

Q. In all these cases the plaintiff wanted an order for sale and the defendant was resisting it.

A. Yes. In many cases the representation was that the prices were likely to rise.

Mr. Justice Stuart.—*Q.* Do you differentiate between a man putting to proof and denying. I have a right to say that I want to be satisfied that these goods are up to the sample but to say that the goods are not up to the sample is sheer nonsense.

A. In one case I had to give a date and hear arguments on the point whether the onus in the case should be on the defendant or on the plaintiff.

Chairman.—*Q.* In very many cases where people are pressed with a very heavy loss and where the defendant is a man who would take all sorts of objections, the counsel do not always come prepared to meet the defence with the necessary documents.

A. They are not even well prepared with the case.

Q. This was happening at a time when probably the local bar had no specially good experience of this class of work?

A. Yes.

Q. The consequence was that you had to give a lot of different dates partly to suit the plaintiff's convenience and partly to suit the defendant's convenience in order to wrestle with the defences, because there was no Order 37.

A. Yes. Lately we were anxious to have these cases compromised—rather than allow the cases to hang on.

Q. In all those cases, I take it, there had been ample correspondence about the case and about the appeals.

A. Not at all, denials from the beginning, keeping quiet.

Q. You mean no correspondence about the orders, nothing in writing to show that this contract was with the defendant firm?

A. In certain cases there was but in some cases they kept quiet.

Q. As a matter of fact at that time we know many of these Manchester firms were offering large concessions—25 per cent. or 30 per cent.—and I suppose very often they did not press the plaintiff's case because they hoped by some concessions to get their money in time?

A. Probably they had accepted orders from such people who had nothing with them. They had property which could vanish in a moment without any possible trace. It was in the interest of the plaintiff to get out whatever was possible.

Q. Just one thing in those cases—Did you find that these people ought to have properly used the provisions of the Code as regards getting correspondence or documents so that these could be examined at the commencement of the case?

A. Those who had their representatives in India or offices, of course they could get their documents ready early enough. Those who were in England and only sent their touring agents who came and engaged lawyers, the lawyer would not allow the client to go away and in those cases we have to give dates to get papers from England.

Q. Did you get documents out of the defendant?

A. Never.

Q. Why not? Did the lawyers of the plaintiff go about properly and use the provisions of the Code to compel discovery?

A. They gave notices to produce documents.

Q. Did they make proper application for documents and asked the defendant to file an affidavit of all the documents he had relating to the matter? Did they go according to the provisions of the Code?

A. The procedure of course was to give notice to the defendant to produce certain documents and if the defendant refused they had to keep quiet.

Q. That is not the proper way. The procedure ought to have been an order on the defendant to file an affidavit stating what documents he has or has had connected with the case. Did you ever do that?

A. Never.

Q. If afterwards it could be proved that he had a certain document, which be refused to produce, you can have him for perjury?

A. Probably he might say he did not remember.

Q. You can deal with him again, you can strike out his defence?

A. This procedure was not followed.

Q. That procedure in India was not understood?

A. Never.

Q. And when a judge like Mr. Coldstream does use it people call it something like arbitrary and extraordinary and they rush up to the High Court?

A. Yes.

Q. You will agree if it could be insisted that the provisions for discovery in these cases, particularly in export and import cases, were stringently applied they will probably stop much of the nuisance. These provisions are in the Code already—Orders X and XI. If the procedure for discovery is properly applied and if these documents are properly scrutinised at the beginning you can say 'what do you mean by this discrepancy' and you can stop the nuisance.

A. Yes.

Q. Now I see you say there are many frivolous second appeals preferred to the High Court, that you would disallow all second appeals in money suits up to two thousand rupees and in all other suits up to one thousand rupees. The right of second appeals in such cases should be restricted on the same principle as the right of appeal to the Privy Council from the judgment of the High Court. Now as regards money suits up to two thousands, that is an extension of present law up to five hundred. As regards all other suits up to one thousand, that means I take it, provided security was given or provided the court was satisfied, that there was substantial point of law?

A. Yes.

Q. What do you think as regards present application of Order 41, rule 11, in the Lahore High Court. Do you not think that a great many second appeals are thrown out under that system?

A. I have no experience.

Mr. Justice Stuart.—*Q*. Have you looked at the figures?

A. No.

Q. The Lahore High Court dismisses three out of five appeals without even sending for records.

No reply.

Chairman.—*Q*. Now you suggest that at the time of appeal the first appellate court should say that there is a point of law or not?

A. Yes.

Q. I think there is a certain objection to give the first appellate court the right to exclude appeals at its own decision?

A. High Courts do it while allowing appeals to the Privy Council.

Q. Where the High Court differs from the judgment of the lower court, then of course there will be a right of appeal?

A. I have got a hazy idea about it. Of course in those cases in which there is a substantial point of law involved, there should be a right of appeal. But I have very little to say about this.

Q. Even if the High Court refuses to grant leave you can go and move their lordships of the Privy Council and they may or may not grant leave?

A. Yes.

Q. In England a great many things are appealable on leave. Take the case of Chamber Judges. You shall have to apply to the Judge in Chambers and it is not certain that he will always grant you leave to appeal. You go to the court of appeal not on appeal but to ask for leave just as for instance the man who has been refused leave to appeal goes to the Privy Council.

A. Yes.

Q. Well if you are going to try to restrict the right of second appeal do you not think that some effort should be made to improve the first appeal? Do you think that it would be possible to have two judges specially selected from the Provincial Service to hear appeals up to Rs. 1,000 and under and make their decisions final both on points of facts and law? Do you think that that would improve matters?

A. I have not considered that point. Probably you would require a number of subordinate judges.

Q. You object to it on account of expense that will be incurred on it?

A. Yes.

Q. In some provinces, I do not know whether it is so in this province or not, the number of second appeals under Rs. 1,000 is so large that it is more expensive to deal with them by two High Court judges than to provide six or seven extra sub-judges for first appeals. In the case of the Punjab I rather gather than it may cost a certain amount of money, but do you not think that the aim ought to be to have not too many trials but to give a person at the earliest moment a sufficiently good court?

A. Of course there is nothing to be said against the principle.

Q. So you think that the principle is right but the difficulty is with regard to finances?

A. But at the same time people love to go to the High Court and they have more confidence in the High Court than in any other court thinking that they can get justice only in the High Court.

Mr. Justice Stuart.—*Q.* In the Provincial Service have you got a sufficient number of good and efficient judges to provide for these benches? I am simply asking this for information.

A. Would you establish benches in each district?

Q. No, we would give them as much work as they can do within a year. As regards your province I cannot give the number of appeals because I do not know the local conditions of this province. I can give you figures of my own province and I should call it 1,250 appeals sufficient work for a bench and not too much. I cannot say exactly how many senior sub-judges would be required if these benches were established. There would not be benches for each district but for each division. They would sit at some central place so that all the districts may be at equal distance from the headquarters?

A. Yes there must be finality somewhere.

Sir T. Desika Achariyar.—*Q.* I find from the administration report that out of 60,361 suits more than fifty thousand are of the value of Rs. 500 or less than Rs. 500, twenty thousand of the value of Rs. 100 and less than Rs. 100

and more than half of it less than Rs. 50. Having regard to this large mass of petty litigation, is there no way of having some of it disposed of as near the villages as possible? There are mediators in villages and the Village Panchayat Act has been passed.

A. How can we do it? The Village Panchayat Act itself was only enacted in 1922.

Q. We have been trying village panchayats in Madras. The rise in the number of suits instituted is most striking. 99,569 suits were filed as soon as the village panchayat courts were organized in the Madras Presidency. I want to know how it will work here?

A. In the Punjab I have always heard that people have no faith in village panchayats.

Q. Mr. Calvert came the other day and said that there are as many as 145 Arbitration Societies with about 15,000 members and that they disposed of a large amount of litigation which never went to courts at all.

A. I have very little experience.

Dr. DeSouza.—*Q*. You made a complaint that ministerial establishments in your courts are all undermanned and there is great cause of delay in the disposal of suits. Can you give us an idea of the scale of establishment in sub-judge's courts and munsif's courts?

A. My idea is the number of process servers should be increased and the process serving department should be complete in itself.

Q. What is the standard prescribed by the High Court for service in the number of process servers for each court?

A. Sometimes 1 or 2 or 3 process servers are added to each court. The litigation has increased but the number of process servers has not been increased to that extent. Each court has to send its processes to the nazarat department and the nazarat department is under the senior sub-judge. Of course he can have administrative control. But he cannot be expected to look into the summonses of every court whether they have been served.

Q. I am asking you more about the clerical establishment.

A. I should suggest that there should be a clerk of the court in each munsif's court. A steno-typist would be much better in the place of a reader. There must be 2 or 3 nazirs looking into execution work.

Q. Is there no execution clerk?

A. Sometimes you give one to certain courts.

Q. Do you mean to say that a sub-judge of the third grade works with nothing more than one reader and one ahlmad?

A. He might have a madad moharrir. He does execution work. But, it is very heavy.

Q. In an outlying court you don't have more than 4 clerks?

A. Yes.

Q. What would be the ordinary average institution of suits in an ordinary munsif's court?

A. About 300, 400 or 500 in each month.

Q. For the preparation of processes, recording of depositions, preparing decrees and executing decrees, in all these cases you have not more than 4 clerks?

A. Yes.

Q. Is there any delay caused in the actual preparation of processes?

A. Yes. When they give a date of 2 months, the person responsible for the preparation of process sits idle or is doing some other work or if he is careful he might get the process written by somebody else or by a munshi or by a process server and gets him paid by the people who apply for summonses.

Mr. Justice Stuart.—*Q*. Have you got a copying department?

A. It is under the Deputy Commissioner.

Q. How does that work?

A. It works unsatisfactorily.

Q. Is there unnecessary delay in granting copies?

A. There is always conflict going on. The officers in charge of the copying department say that it is the civil officers who delay in giving the records.

Q. So, there must be frequent delays caused in obtaining copies also?

A. Yes. For production of certified copies we have to give dates if we are satisfied that he has made an application.

Q. Do you mean to say that you have the copying department in the Deputy Commissioner's office and the records of the civil courts will be in another building?

A. They are also under the Deputy Commissioner. They are all in the same building.

Q. In Lahore the records have to be carried a considerable distance from one building to another to have the copy prepared. Is there not very great danger of the records being tampered with?

A. Yes. Errors could creep into the record office itself.

Dr. DeSouza.—*Q.* You have long experience of many courts. What would you suggest as to the reasonable scale of clerical establishment for munsif's courts and sub courts?

A. A clerk of the court must be attached to each court. There must be a reader or preferably a steno-typist. There must be an ahlmad and there must be 4 other clerks.

Mr. Justice Stuart.—*Q.* How would you divide the work between them?

A. The ahlmad and an assistant will be in charge of original suits.

Q. You would call him suits clerk.

A. Yes. The other clerk will be execution clerk and another miscellaneous muharrir. The clerk of the court would look to the service before hand and he will be the responsible person to see whether service is made.

Q. Are there any specific cases of delays? Just give us the dates of these cases.

A. The first case is Downie *versus* Benarsi Das instituted on the 9th December 1921 and decided by the District Judge on the 13th March 1923. The other case was filed on the 19th November 1921 and decided on 1st November 1923. Commissions to England were issued at the instance of the plaintiff.

Q. The commissions were issued at the instance of Mr. Downie himself?

A. Yes. Moreover the evidence of the plaintiff was not ready and that delayed the case for four or five months. The defendant did not take as much time to close the case as the plaintiff did.

Q. Your trouble is that this man had absolutely no knowledge as to the conduct of the case either in India or in England and they come out absolutely unprepared.

A. Sometime of course that is so.

Q. The defendant also takes every frivolous and dishonest plea that he possibly can.

A. Yes.

Q. I understand in Delhi there are a number of old established firms who are carrying on business for a long time and who never come to the court.

A. Yes.

Q. But on the other hand you have got a large increasing number of firms which have been in existence for a few years and their standard of commercial honesty leaves much to be desired, and these are the people who are mostly in the court.

A. Yes and the manufacturers and shippers in England are careless in accepting orders of everybody without finding whether they had credit with any bank and whether they have been doing any piece-goods trade at all.

Q. Some of them had shops about six feet long and about three feet broad, and they were selling cloth by yards and they sent orders for big consignments. But these cases are coming to an end now?

A. Yes. If they had understood the law of arbitration it could have been applied and there would not have been so much trouble.

Q. What is your estimate of the real needs of normal commercial Delhi, needs in the way of courts? Do you think they require one special commercial court?

A. I should say that about eighty per cent. or even more cases are commercial cases in the sense of the term as defined in the rules.

Q. Would not that rather postulate the necessity of a commercial court?

A. Yes.

Q. Of course there is another difficulty. You tell us very frankly that you had really to learn your commercial work at Delhi. If you had studied commercial work in the office of a commercial solicitor in practice in Calcutta would not that have helped you very much?

A. Yes. If the lawyer had also been trained. If the lawyers themselves know what they say then we can understand them.

Q. Do you not think that the public have got a certain reason of complaint that when you get a sub-judge in Delhi and he begins to command the confidence of the public he is bound to be transferred on promotion? If he is a good man he is bound to be promoted and he is bound to be transferred. Do you agree that a remedy would be to make a special appointment on special pay?

A. But a sub-judge would not like to stay for more than three or four years for some other reasons.

Q. Would you like to start a procedure on the line of presidency small cause court judges? They are there permanently. Do you think that system would work in Delhi?

A. It might or might not work. The people would not like me to decide their cases because I know them, the kind of business they have and I have decided their suits.

Sir T. Desika Achariyar.—*Q*. I want to put you two or three questions connected generally with the codification of the substantive law and as far as possible minimising the necessity of taking oral evidence. What do you think of the Transfer of Property Act being extended to this province and making all transactions being compulsorily evidenced by documents?

A. The principle of Transfer of Property Act is applied to this province. The difficulty is that here in the agricultural country we have got revenue officers and there are wills, mortgages and even redemption by mutation. The Transfer of Property Act is meant for enlightened people.

Q. I do not know if people in other provinces are more enlightened where the Transfer of Property Act is in force?

A. I understand that. I think there will be great difficulty experienced by those who live in the country or ilaqa to get documents executed almost in all cases.

Q. Do you think that it is not possible to have this Act extended to this province?

A. No it is not possible.

Mr. Justice Stuart.—*Q*. Surely you have got in the Punjab no portion as backward as Bundhelkhand in the United Provinces. We have extended the Act to that part of the provinces and we do not find any trouble there. You depreciate yourself too far if you say that you are more backward than Bundhelkhand.

A. I do not think we have had much trouble in the evidence being let in on these pleas that there has been an oral sale or there has been an oral mortgage. As a matter of fact the courts here have very little to do with it.

Sir T. Desika Achariyar.—*Q.* Apparently there has been no litigation in which oral evidence was let in?

A. Yes.

Q. They are, I understand, followed by mutations and possession is recorded in the revenue papers?

A. Yes.

Q. Do you think that it would be of no use to extend this Act to the Punjab?

A. Yes. In fact there are very few cases in which oral evidence is let in. It would not do too much benefit to extend this Act to this province. It will be troublesome.

Q. I would like to ask you something about another matter and that is customary law?

A. I should think that customary law has been so much discussed in rulings that practically we do not require any codification.. If there is any case in which custom is involved we at once come to know whether the man will succeed in this case or not. You cannot stop custom everywhere and I do not think codification can help much. At the same time we have Riwaj-i-Am in each district which deals with special customs of that district.

Q. I think in the United Provinces they have got Wajib-ul-Arz?

A. But the Riwaj-i-Am is much more elaborate than Wajib-ul-Arz.

Q. I am putting you this question to get some information from you because other witnesses who have appeared before the committee have told us that the first and the foremost thing to do is to codify the customary law. I think the trouble to which they refer is that in certain cases there is no restriction and no limitation as to the right of the plaintiff to bring a suit?

A. Supposing a man or a woman alienates his or her property, then his or her reversioners or collaterals of any degree can bring a suit after a lapse of time.

Q. I am not an expert in this matter, but I would like to be enlightened.

A. Yes that is the real difficulty which we feel here. When a man or a woman—widow, owns property and there is no reversioner up to the fifth degree, a reversioner of the sixth degree would come in after ten or fifteen years and bring a suit for possession. These are the anomalies of the customary law.

Q. Are there any branches of the customary law which can be codified?

A. Yes there are certain branches of the customary law which may with advantage be codified.

Q. Are there precedents on almost every question which are conflicting and therefore cause confusion?

A. I should not say they are conflicting. It depends upon time. The rulings of older times do not tally with rulings of to-day.

Q. Do you mean to say that there are superseding rulings?

A. Yes you may call them superseding.

Q. Well what is your opinion about the execution of decrees in respect of agricultural lands?

A. There is a conflict between judicial officers and revenue officers in that case. You can only attach produce but not the land. You cannot sell land in any case and then attachment can only be continued for a certain number of years and no more. The greatest difficulty is, if the produce is attached, to know who should be responsible for the payment of land revenue.

Q. Well how would you prevent that conflict?

A. The only thing that can be done is to bring this matter to the notice of the Collector that he and his subordinate officers might pay more attention to it and some rules might be laid down for their guidance to prevent any conflict and abuse of these powers by some low paid revenue officials. You cannot take it into your own hands, because the question of land revenue is involved in this case.

Q. So with reference to the execution of decrees against land, you think that they may continue to be executed by revenue officers, but there should be some administrative orders required to see that there is no conflict between them and subordinate judge's court and that they should act quickly without any favour towards the agriculturist because they are interested in them?

A. There is the patwari who is at the bottom of the whole thing. The Deputy Commissioner never goes, the revenue assistant seldom goes there and the tahsildar goes only when there is an important case. The patwari is more interested in the zamindar than in the money-lender. It is generally he who makes statements that the debtor has so many children and so much is required for their maintenance and he has to pay so much land revenue and therefore so much should be left out for that purpose. It leaves nothing for the decree-holder.

Q. So there is some room for some rule to be made in connection with the execution of decrees against agricultural lands?

A. Of course civil courts do feel that they are obstructed in having their decrees executed and the amount thereof realised for the decree-holder. The remedy is not that they should get power, but the remedy is that the highest judicial officers should combine with the highest revenue officers and make some rules or modification and allow civil courts to criticise the reports of revenue officers and make them agree to their own views.

Q. That is not the law. Of course the law may be modified with advantage to certain extent?

A. Yes. When a decree against agricultural land is sent to the Collector, no one pays any attention there.

Q. What is your opinion on the system of allowing a person who is a party to a document or a transaction to say that a document executed by him is a sham and was never intended to be acted upon? I see you say that the existing state of things must continue.

A. My idea is that he who denies registration, must prove it, because my view of judicial law is that however frivolous a plea may be, you cannot rule it out.

Q. The question is whether the law should exist as it is or should be modified in some form?

A. If a point has been wrongly ruled then there must be revisions, appeals and so on.

Q. Why should not there be a strict rule to prevent such pleas being put in?

A. Then they will plead fraud, misrepresentation and so on.

Q. Is there any trouble with regard to *benami* transactions?

A. Not here.

Dr. DeSouza.—*Q*. Coming now to institutions if the institutions in any particular court are in excess, will you ask for an additional man?

A. Yes.

Q. What is the copying fee? One of the witnesses complained that the copying fee is exhorbitant.

A. I have no experience of that. I know of a case in which the file consisted of forty pages. I was then drawing rupees three hundred a month and I found that the copying fee was over four hundred rupees for that particular file.

Q. How many years ago was that?

A. That must be ten years back.

Q. And the rates have been considerably enhanced now?

A. I do not know. That file came to me for signature and he got about two hundred rupees for the work for which I got rupees one hundred and fifty.

Q. There is just one point in connection with the case on which Mr. Justice Stuart started examination. I ask this question because I have got the evidence of Mr. Moss before me. Mr. Moss says that he made an application for documents being produced by the defendant and his lawyers did everything that he could possibly do. The court rejected application for the production of the documents and the reason given was that a man could not be compelled to produce evidence against himself. Do you recollect that?

A. My view is that the general impression amongst the lawyers is that if you ask a party to produce a document and he does not produce it he cannot compel the production of that document later on. His counsel might have told him . . . .

Q. No he says the judge told him.

A. That is not true.

Q. Mr. Moss also said that the case was delayed for many months because mission was issued to England without any reason.

A. It was at the plaintiff's own instance.

Q. And therefore he cannot complain of the delay which was really caused by him.

A. The delay is also caused by the defendant. He produces such a plea as necessitates the issuing of a commission to England.

Bakshi Tek Chand.—*Q*. You have suggested that there should be no second appeal in cases the value of which is up to two thousand rupees. Do you restrict your reply only to money suits or to land suits as well?

A. Primarily my reply applies only to money suits.

Q. I was particularly going to ask you with regard to land suits. Is it not a fact here that the artificial value fixed for a land may only be two thousand while the market value may be ten thousand?

A. I quite understand you. Of course I never mean to include those cases.

Q. One other suggestion you have made that the courts be given discretion to disallow the examination of witnesses.

A. If you have allowed sufficient time to the party to have them served.

Q. When the man is served and he does not appear then you would allow the court the discretion not to permit that man being summoned?

A. If the case for defence is reasonable.

Q. Surely you do not want the warrants to be issued to the parties?

A. I have suggested in my report that even before the witness has been served he keeps away or the party wants to keep him away. In that case the warrants can be issued.

Q. Do you not think that courts are rather lax in applying the Penal Code against witnesses in issuing warrants?

A. If a witness is served it is seldom that he does not appear. Only in those cases the hearing is adjourned where the witness is not paid the diet money.

Q. If the present rule is strictly enforced there is not much room for modification. At least these provisions have not been given a fair trial if I may say so?

A. There must be something done to stop the intentional keeping away. I would not like to change the procedure.

Q. With regard to delays, after the Armistice there was abnormal litigation. Having regard to the state of normal litigation in Delhi do you think there is sufficient work for one commercial sub-judge there?

A. I think there will always be work for two commercial sub-judges. There is no *ilaqa* and there are only city cases.

Q. You think there is room for at least two commercial sub-judges?

A. One at least.

Mr. Coldstream.—*Q.* You have worked for a long time and you got to know the working of the courts. You have mixed a lot with people and socially you were well-known. Did you hear of any complaint about the delay—the ordinary delay?

A. You mean to say from the residents of Delhi.

Q. Yes.

A. No, of course no one spoke to me.

Q. You did not find that there was a great cause of complaint?

A. No.

Q. You saw the working of the junior courts and you heard their appeals. It has been suggested that these sub-judges should now be recruited from the local Bar. Do you think if you recruit sub-judges from the local Bar the work of the courts would improve and would tend to more rapid disposal of suits?

A. If a man has put in some practice as a lawyer he can prove his merit on that side. He would not like to come and work on three hundred rupees if he is an efficient lawyer.

Q. Do you think that recruitment of subordinate judges from the local bars in places like Delhi would expedite disposal?

A. I should think not much.

Q. Were you a practising lawyer before you joined service?

A. I was given a direct post by the Government on account of my family.

Late JASWANT RAI, Senior Sub-Judge, Lyallpur.

Written Statement.

I.

1. The period supposed in the Punjab for all original suits is 4 months. Courts have to show in their periodical statements cases pending over 4 months. This should in my opinion be raised to six months, for courts of 1st and 2nd class sub-judges at least.

4. Recruitment in part at least must be by competitive examination.

5. The new recruits should have besides a short settlement training, judicial training for 2 or 3 months with selected senior sub-judges. The Hon'ble High Court in 1919 sent a class of 5 munsif candidates to me for one week's judicial training. The Appendix A to this note is a copy of my report on the subject and will show on what lines training needs be given in this province.

6. Certainly.

25. I have no opinion to give as to the desirability of the application of the procedure under section 106 of the Transfer of Property Act to civil suits, but in my humble view the courts themselves are more to blame for the long delays in service than the process-serving agency. Processes issued by High Court and district judges are seldom returned unserved. I seldom have to postpone a case for failure of service due to fault of a process-server under my own control, as the moment I find a process-server at fault, I do not hesitate to suspend him and if his previous record is bad, even to

dismiss him.* A few punishments meted out promptly stop all further trouble from that quarter. The difficulty with lower courts is that they do not assert themselves, they, or rather their readers each time mechanically write out the order, "Summons not served. Fresh summons." They do not pause to enquire:—

(1) If the address given by the party was correct and complete.
(2) If the process fee was paid by the party and in time.
(3) If the official concerned wrote out the summonses correctly and legibly.
(4) If he handed them over to nazir in time.
(5) If nazir entrusted them to the proper peon, and in good time.

If all these points are favourable, one has yet to see:

(6) In case the peon reported in time for the nazir to make a fresh effort or to obtain orders from court, or help from the parties if that was done.
(7) If the summonses were returned by the nazir in time.
(8) If the court official who received the dak passed them on to ahlmad.
(9) And if the ahlmad placed them on the proper file.

It is not unusual that the address given is wrong or incomplete, the process fee was pocketed by a vakil's agent or by court ahlmad, or misplaced by the latter, or paid very late. It is not unusual that the summonses are written not by the proper official himself but by a candidate or even peons attached to court are sometimes utilised to write them, with the result that summonses are badly and wrongly written. Sometimes they remain with the ahlmad or the nazir who would not issue them until he is tipped, and sometimes it is due to his carelessness or oversight. The nazir seldom properly checks the peon's report with a view to make fresh and earnest efforts for service of summonses issued by subordinate courts, while he is generally more careful in case of those processes issued by higher courts.

It has not happened unoften that a case is adjourned as summonses were supposed not to have come back while they were lying with reader or in a loose bundle in the ahlmad's almarah or with nazir.

And yet process-servers are always held liable for all causes of non-service. They are a bad lot I admit but certainly not worse than men of their status in other departments, *e.g.*, police constables, canal patwaris, revenue peons, and are capable of considerable improvement if courts take proper care.

The time spent on the enquiry into real cause of non-service is well spent as when the real offenders are found out and duly punished, whoever they be, occasions for such enquiry will diminish automatically. When once the officials and peons realise that the presiding judge is keen, they at once become alert.

When at Lahore, I issued a general letter to all courts inviting their co-operation by making proper enquiries in cases of non-service and reporting to me whenever peons are at fault, but few courts took pains in the matter beyond complaining on all occasions against the process-servers in a general way—which can be of absolutely no use. I did the same thing at Lyallpur but with the same result.

I have now started another experiment. I have opened a register providing a column for each court in the headquarters of the district, that register is sent monthly to each officer who is asked to note if he had any specific complaint against any individual peon and if so, he may please give full particulars. To encourage good work by peons I select 4 men who have done the largest number of personal service of processes during the previous quarter to work as assistant bailiffs during the next quarter. This stimulates some of them at least to show larger percentage of personal service.

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*See Appendix 3.

The recent orders of the Hon'ble High Court that each civil court should be given its own peons entirely under its control are bound to lead to better service if the presiding officers take interest in it, and not leave the matter entirely to their ahlmads or naib sharifs. But a larger number of men shall have to be provided as different men will now have to go to the same beat taking processes from different courts where previously one man went with processes from all courts or the peons may be allowed actual railway fare or tonga hire where journey by rail or tonga is possible as that would shorten their work.

I gave with my report to the Registrar, High Court, regarding training of munsif candidates abstract of orders in two cases tried by two different munsifs as Appendices 1 and 2.* They are typical cases and their perusal (which is worthwhile) will show fully that the delays are not mainly due to process-servers but on account of the presiding officers' lack of enthusiasm and of earnest business-like way of doing a case; they sometimes have a tendency to postpone a case on any excuse and to be led by all men and all circumstances rather than to have their own method and system and to compel others to adapt themselves to it. Working systematically I was able to reduce very heavy files of old cases of 3 courts, senior sub-judge, Lahore (from 50 to 3 in 5 months—1917), 2nd sub-judge, Lahore (from 48 to 6 in 4 months—1917) and senior sub-judge, Lyallpur (from 75 to 6 in 17 months—1923-24). This is not to show my personal work but these figures clearly indicate that with the same process-serving establishment work can be well controlled if the officers apply their mind to this branch of their duty and take courage to handle them justly and not softly always, and if it is realised that charity towards peons is misplaced and often means cruelty to litigant public.

28. Certainly as regards post office; telegraph office can also be used as a very effective aid when dealing with other districts. Reply prepaid wires to enquire if particular summonses are served or not when their return is expected, will bring prompt replies, their cost being counted as costs in the suit.

Village officials.—It should be made specifically a part of their duty to help service of processes by process-servers and bailiffs. I would not entrust direct service to them.

29. Yes.

30. Pleaders cannot do much in the way of helping service. The recent orders of the High Court that the parties shall be responsible for service of their processes and that no second process should issue unless the party requesting it had done its best to have the service effected and that party or agent must accompany the process-server, are quite sufficient and if properly followed should go a long way to improve service.

Hitherto parties or their pleaders did not consider it any part of their business to help service. They considered their duty ended with depositing process fee.

33. Certainly.

41. Yes. The suggestion, if accepted, would be very helpful.

54. The courts to which a decree is transferred for execution should have the powers stated in the question.

56. (*a*) Emphatically No, (*b*) No. (*c*) Yes. I would not approve of the suggestion cited in the last sentence of this question.

63. A single notice in the beginning should suffice.

64. Writs of attachment and sale-proclamation may issue simultaneously. Notice on such vakil should be ruled as sufficient service, if vakils can also be directed to keep a record of their client's addresses and to accept service for them and communicate court's notice, to them. If clients fail to keep their counsel in touch with their addresses, they will have to thank

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* Copy attached herewith as Nos. 1 and 2.

themselves in case they suffer for want of communication of any notice to them.

65. No. Only they should help our process-servers and bailiffs.

66. (*a*) I am not in its favour.

(*b*) and (*c*) It would not arise.

(*d*) I approve of it. That would simplify things.

(*e*) I would not disturb the present law on the subject. There needs be no final decree.

It is necessary to have provision in the decree for personal liability when security is exhausted.

67. Yes. This should never be done until security to the satisfaction of the first court is furnished. Reports should be called for from first court and the other party heard before stay of execution.

In urgent cases telegraphic reports may be called, or the other sido called by wire. In a case recently decided by me one party twice got High Court's orders staying possession by Receiver, once when he appealed against my order and again when he filed L.P.A., and thus taking long time was able to do damage to the partnership property to the extent of Rs. 60,000 which amount it will be exceedingly difficult now to recover from him. I think an irreparable wrong has thus been done.

The safeguards suggested by me would I think be more efficient than compensation, though powers to grant that also may be useful on occasions.

69. It should be ruled definitely that the execution of decree should not be stayed until a judgment-debtor is *adjudged* insolvent.

70. Execution proceedings are very considerably delayed frequently by processes issued against land through Collectors. The Collectors and the revenue assistant do almost nothing in these cases beyond passing the papers on to the tahsildar and agreeing with him when his report comes. The due interests of the zamindars and the policy of the Government can well be entrusted to civil courts. They can get help from tahsildars or patwaris where necessary.

87. Customary Law in the Punjab, at least a few well recognised customs may at once be codified, *e.g.*, a daughter precedes collaterals in respect of self-acquired property left by her father. I have had cases in which I had to waste considerable time in recording voluminous but useless evidence supposed to prove the contrary.

II.

APPENDIX A.

To

The Registrar, High Court, Punjab, Lahore.

SIR,

With reference to your endorsement No. 1499-G., dated 19th March 1919, I have the honour to report that the candidates mentioned therein attended my class from 24th to 31st March 1919 and were given judicial training on the lines indicated by the Hon'ble Messrs. Chevis and Scott Smith J. J.

2. They were given the practice and procedure observed in courts from the point when a new plaint is received upto the pronouncing of the judgment. They were advised that they ought not to accept any plaint until it was accompanied by the documents, relied upon and in plaintiff's possession or power and also by a list of others, also relied upon but not in possession or power. If plaintiff says he has no document to rely upon, it would be safer to have a written statement to that effect from him with the plaint. Similarly when the defendant appears documents on which he relies should

be taken over from him, if in his possession or power or a list obtained if they are not in his possession or power or a statement recorded that he relied upon none.

3. Great stress was laid on a proper handling of the case at the first hearing, as a thing well begun is half done. By carefully studying the plaint and the pleas, examining the parties and the documents produced and discussing the matters with the parties and their counsel it would be discovered that there are often very few items of real dispute. A file from my own court was taken in which the defendant No. 1, raised the following preliminary pleas: —

(a) Plaintiff was adult and could not sue through the next friend as he has done.

(b) Calculation of interest was wrong.

(c) Plaint was not properly verified.

(d) Wrong name of the defendant No. 2 was given.

Plaintiff and his next friend were examined as to plaintiff's age and they both admitted that the plaintiff was 20 years old; amount of interest was calculated and corrected, the verification rectified and the correct name of the defendant No. 2 obtained and the plaint amended then and there. The whole thing was finished in ten minutes. A slovenly court would have probably given a date for replication and on that date returned the plaint for amendment and possibly lost some weeks over these trifles and would have left the calculation of interest as an issue between the parties. In another case a preliminary point of limitation was disposed of at the first hearing after examination of the parties.

In a 3rd case there was a preliminary point of *res judicata*. The file of the previous case was immediately sent for from the record room and shown to the plaintiff's counsel who after seeing it withdrew his claim at the first hearing.

4. *Service of processes.*—The candidates were impressed that failure of service is a constant source of delays in civil cases and the poor process-server is always believed to be at the root of the evil, but my experience is that the courts themselves are most to blame. Cases are postponed for want of service in a most mechanical way without giving the matter the least thought. If the courts, when receiving the reports "summons not served" instead of giving the mechanical order "issue fresh summons" paused for a moment and enquired why it had not been served, whether it was due to the process fee not having been deposited in time, or due to the fact that the wrong address was given, or that the ahlmad of the court issued summons very late or the nazir unduly detained them or the peon did not make proper efforts to find the man and then the court took serious action against the person really at fault, whoever he be, the process serving would improve within a month. The time spent in this enquiry will be time well spent and the time thus spent in a few cases will save many a future adjournment in other cases as well. Once it is realised that the presiding officers of courts mean business and tolerate no humbug of any sort or in any quarter most of the little troubles will disappear.

5. *Proclamations in newspapers.*—The candidates were reminded that the issue of proclamations under Order 5, Rule 20, Civil Procedure Code, in newspapers, in the un-intelligent way it is being done serves no purpose. In cases in which the defendant is a Hindu notice is often published in Mohammadan papers and *vice versâ*. Proclamation by beat of drums in the village or muhalla is much cheaper and often very effective but when notices have to be sent to newspapers only those papers should be selected which are honestly believed to be likely to be read by the party concerned.

6. *Service of witnesses.*—The class was advised that the power to issue bailable warrants of arrest of witnesses and to attach their property should be boldly exercised when it is believed that a witness is deliberately keeping out of way. Sometimes the employees of firms and of different

departments of Government take time and several hearings to come up. When the case is thus being unduly delayed a departmental order or preferably a wire to the head concerned in most cases promptly secures the attendance of the required witness. With little intelligence and interest in the work the cases simple as they generally are could be finished in no time.

7. *Practice in court's routine work.*—Class was given some practice in framing issues. They were given plaints, pleas, replications and statements of parties and required to frame issues which were then revised and corrected. They were also asked to take down evidence in a few simple cases. They were also given practice in writing the usual routine orders. It was noticed that they wrote bad orders and in forms worse still. Instead of depending upon their readers for the training in daily routine work they learnt this with me.

8. *Record Room-Typically bad cases, object lessons on adjournment and delays.*—As suggested by the Hon'ble Judges the candidates were taken to the record room and shown many decided files. Some typically bad cases were examined to impress upon their minds the most usual errors. Advantage was taken of these files in showing how cases were adjourned on most frivolous grounds for filing pleas—for compromise, for arbitrator's award, for commission's report, for examination of parties, for examination of documents, for statement of a single witness (without any strong measure being taken to get hold of the man), for documentary evidence, for parties not having deposited process fee or filed list of witnesses, for arguments and for judgments. I beg to submit as appendices to this report abstracts of orders in two cases selected by me and it will be noticed how excellently they served the purpose of object lessons in defiance of the very strong letter of the Chief Court No. 2144-G., dated 10th April 1918, warning that if the judicial officer persisted in this practice of long adjournments on inadequate grounds their promotion would be stopped.

9. *Ex parte proceedings and dismissals in default.*—Great emphasis was laid on the fault of hasty dismissals and restoration of cases so wrongly dismissed as a matter of course and conversely of passing hasty *ex parte* decrees and then setting them aside as a matter of course. This device deceived none but the officers themselves. It simply added to their own work. They were impressed that it is safer to wait till next day as a heavy rain, impassable village, roads or the missing of a train might sometimes delay an otherwise prompt suitor. This has been my practice with most successful results. I had not one case dismissed in default during the whole year 1918 and so was saved the ordeal of calling " Kaifiyats," calling files, issuing notices to show cause against restoration, calling witnesses in proof of cause for absence and then starting the case after all this worry from the stage at which it was dismissed in default and all this intermediate work for nothing. Several cases examined in the record room showed that the munsifs decreed claims *ex parte* without the affidavit of the process server as regards service and further that the summons even were placed in part B (*náthé be*) of the file. It was pointed out to the candidates that this was very wrong as part B would be destroyed after a year and when after some time the defendant applied for having the *ex parte* decree set aside no summons would be there to show whether he had been properly served or not.

10. *Commissions and arbitrators.*—The tendency of issuing commissions on every possible excuse was strongly deprecated. It showed slackness and a desire to throw your burden upon others. It seldom saves time. Even in accounts after considerable time is lost in getting commission's reports you get objections to decide in which you have often to go over the whole of account again personally. Much simpler method is to let each party file his own account, and if the accounts are with one party only let that party file it in court and also furnish abstracts and brief tabular statements to show the results at a glance and then the opposite party should be asked to examine them and file his objections. An examination of parties after this will considerably simplify matters and the few items that will still remain disputed would form the subject of issues and be decided after evidence.

Commission should not be used merely as means to oblige friends. When it is necessary to issue a commission, only very reliable and prompt men should be selected and they should be unhesitatingly dismissed if their report is not received in a reasonable time. The same remarks apply to arbitrators, the power to dismiss whom should be freely exercised as soon as the award is being unduly delayed.

11. *Sadar munsif courts, execution work, special kanungo.*—The last day was spent in the sadar munsif's court and the candidates shown the realities of their would-be daily official life. When the candidates noticed that the munsif was issuing fresh summons without making any enquiries into the cases of the previous non-service they at once pointed out the defective practice. They observed and were seriously warned against the reprehensible practice that an ahlmad was finishing execution cases when the munsif was awfully busy with his regular suits. They were told that this was a direct invitation to the ahlmad's corruption: a man of salary of Rs. 15 or Rs. 20 entrusted to decide all the execution cases. There is no wonder that realization through courts are so small. They were impressed that the execution cases are as much a part of their duty as regular suits and sometimes involve difficult questions of facts as well as law and must be attended to personally. In this connection they were shown a case from my court in which a report was received that the peon found the judgment-debtor too strong for him to arrest and that no neighbour would witness the report. I at once gave the order that the civil nazir should himself go taking two peons with him and arrest the man. Such an order could not be given by an ahlmad who would mechanically write, " issue warrant again." It is not sufficient that a munsif should do his work honestly and intelligently, he is responsible for the purity of his court staff as well, which is bound to deteriorate if the staff is left to itself.

12. A munsif was recording evidence in an old land case. The opportunity was seized to show how much time could be saved if the services of the special kanungo had been utilized.

13. *Inspection of spot. Punctuality. Bar.*—Useful hints were given on these subjects. They are not to be travelling allowance hunters but should not shirk going to the spot when necessary and when they fix a date for inspection of spot they must go there punctually. Punctuality in their hours and dates in court and in camp will reflect on the quality and quantity of their work. The candidates were advised to be courteous and accommodate the members of the bar as regards date and time as far as possible and to hear them very patiently but they should not play like a rubber ball in their hands and should freely resist any effort to unduly lengthen the case by irrelevant questions or frivolous petitions.

14. *Registers. Shariff's petty accounts. Civil Courts' deposits.*—The candidates were told that if they gave but half an hour each month to their registers, they will not have occasions to call files from the record room constantly for " Kaifiyat." Their Register No. 1 would be complete and enormous time of the courts' officials, parties and record room people would be saved with the observance of this simple precaution. 15 minutes a day to Shariff's petty accounts and Civil Courts' deposits would save many an embezzlement and will give an impression that the presiding officer knows his business and neglects no branch of his duties.

15. *Conclusions.*—It will be seen that I have tried to make the best use of the candidate's time. Yet I feel many things have for want of time been left over which they could learn with considerable advantage if we had more time at our disposal. The result of my experience of this week's training is:—

(*i*) that such training is very badly needed. I should think it is indispensable.

(*ii*) If the munsif-beginners learn their work properly not only would they be more efficient but corruptions in the *Amla* class would also be considerably less; at present they learn their work from their readers and nazirs and naturally find it impossible to control them properly.

(*iii*) but the training to be effective must be for not less than one month. The munsifs in the mofussil have to deal with process-serving establishments, Shariff's petty accounts and Civil Courts deposits and I think require training in that work also though these do not count under the word "Judicial." The time would be very well spent if they are sent out after a month's thorough training and practice in their various duties. They are given three months' settlement training but in their own line they have at present no training whatever.

(*iv*) When selecting candidates for training at a time only men of almost equal qualifications may be classed together, *e.g.*, competitioners or quite beginners should not be trained along with clerks of courts. In the class that I now had there were three clerks of courts of the district and sessions judges and were fairly well acquainted with the procedure of the court and knew the various circular letters issued by the Hon'ble Chief Court from time to time. The other two candidates were quite beginners and had to be told very elementary things. Time would have been surely economised if they were all of about equal level.

(*v*) Lastly to avoid the dislocation of work of the officer training the candidate he might be given about a month's previous notice.

In the end I pray to be excused for this lengthy report as the matter is a new one. I was anxious to make a full report to enable the Hon'ble Judges to give further instructions for my guidance.

The two files of the Chief Court which I brought for reference are returned herewith with many thanks.

I have the honour to be,
SIR,
Your most obedient servant,
JASWANT RAI,
Subordinate Judge.

LAHORE,
The 1st April 1919.

APPENDIX I.

IN THE COURT OF MUNSIF, LAHORE.

SUIT No. 145 OF 1916.

Jain Bank of India Limited through Khushi Ram, Plaintiff,
versus
L. Mangat Ram, Cloth Merchant of Amritsar, Defendant.
Claim—Suit for recovery of Rs. 573-14-3 on account of share money.
Instituted on 12th February 1916, decided on 27th May 1918.

Date.	Abstract of Order.	REMARKS.
18th February 1916	Plaint admitted, summons to defendant to settle issues for 8th March 1916.	
8th March 1916	Parties present, defendant's pleas not ready. Postponed to 28th March 1916. Defendant to pay Rs. 2/- as costs.	The costs, Rs. 2/- appear to me to be meaningless.

Date.	Abstract of Order.	REMARKS.
28th March 1916 .	Parties want time to compromise. Allowed till 14th April 1916; if compromise falls through, defendant to file his pleas.	
14th April 1916 .	On the 13th April 1916 parties applied to make over their case to an arbitrator—request granted. 8th May 1916 fixed for award. Parties directed to produce their evidence before arbitrators on 28th April 1916.	5 months lost in arbitrators' proceedings but nothing came out of them. I would have dismissed the arbitrators at the 1st or the 2nd hearing at the latest.
8th May 1916 . .	Award not filed. One of the arbitrators not even served. Case adjourned to 22nd May 1916 for award.	
22nd May 1916 . .	Award not ready. Arbitrators want time. Adjourned to 5th July 1916.	
5th July 1916 . .	Award not filed. Adjourned to 16th August 1916.	
16th August 1916 .	Arbitrators do not agree, parties to nominate an umpire by 19th August 1916, otherwise Court will appoint.	
22nd August 1916 .	(No order of 19th August 1916), Arbitration cancelled. Defendant to file pleas by 28th August 1916.	
28th August 1916 .	Parties present. Defendant wants time to file pleas. Adjourned to 4th October 1916.	No costs. 7 months have elapsed and his pleas are not ready yet.
4th October 1916 .	Pleas filed. Counsel present, parties should appear in person on 30th October 1916 for examination.	
30th October 1916 .	Parties examined, issues framed. Evidence for 2nd December 1916.	
2nd December 1916 .	Witnesses not served. Fresh summons for 16th January 1917.	
16th January 1917 .	Records not received back from Appellate Court. Munsif on leave, adjourned to 21st February 1917.	
21st February 1917 .	Plaintiff's one witness present, other witness not served, defendant's pleader says he is unable to cross-examine the witness without inspecting the plaintiff's books. Case adjourned to 28th March 1917 for evidence. Plaintiff to show his books by 10th March 1917.	
28th March 1917 .	Records not received back from the Chief Court. Case adjourned to 19th April 1917.	

Date.	Abstract of Orders.	REMARKS.
19th April 1917	File received. Evidence for 30th May 1917.	
30th May 1917	Mangat Ram, defendant, not served as a witness, adjourned to 10th July 1917.	Three months lost for this witness and no warrant was issued. The witness's property could be attached. He could be fined or prosecuted but absolutely no action of the sort was taken. He was not even asked why he should not be dealt with for his continued absence.
10th July 1917	Mangat Ram not present. Defendant agrees to produce him on next date, adjourned to 6th August 1917.	
6th August 1917	Mangat Ram, defendant, ill, sends medical certificate. Adjourned to 28th August 1917.	
28th August 1917	Mangat Ram missed train. Adjourned to 2nd October 1917.	
2nd October 1917	Khushi Ram, plaintiff, and Mangat Ram, defendant, examined. Adjourned to 15th October 1917 for the evidence of Manager of Bank (Khushi Ram).	He was present and his statement could be finished.
15th October 1917	Supplementary statement of Khushi Ram recorded, adjourned to 15th November 1917, for defendant's evidence.	
15th November 1917	Defendant's witnesses not served. Adjourned to 11th December 1917.	
11th December 1917	Director of Bank, summoned as a witness by the defendant did not bring his books, adjourned to 11th January 1918 for books. Defendant to pay Rs. 10/- as costs for not summoning books.	Very long dates.
11th January 1918	Defendant's pleader did not file any list of books to be summoned. Should submit list by 16th January 1918, adjourned to 24th January 1918.	The flaw discovered at this stage.
24th January 1918	Defendant did not summon any witness for to-day. Should pay Rs. 10/- as costs. Case for 8th February 1918.	
8th February 1918	Defendant's one witness examined, adjourned to 7th March 1918 for further evidence.	This is not business like.
7th March 1918	Defendant's one more witness examined and his case closed. Adjourned to 23rd March 1918 for arguments.	
23rd March 1918	Parties counsel present. Defendant's counsel got fever, adjourned to 6th April 1918.	

Date.	Abstract of Orders.	REMARKS.
6th April 1918 .	Arguments heard, adjourned to 12th April 1918 for further arguments.	Arguments should have been finished next day. Four months lost in arguments.
12th April 1918 .	Adjourned to 30th April 1918 for want of time.	
30th April 1918 .	Adjourned to 30th May 1918, as parties' counsel are busy in another case.	
13th May 1918 . .	Arguments heard. Adjourned to 27th May 1918 for judgment.	
27th May 1918 . .	Plaintiff's suit dismissed with costs.	

APPENDIX 2.

IN THE COURT OF MUNSIF, QASUR.

CASE NO. 548 OF 1917.

Wasawa Singh, etc., Plaintiffs,
versus
Wadhawa Singh, etc., Defendants.

Suit for possession by partition of land.

Date.	Abstract of Orders.	REMARKS.
20th June 1917 . .	Suit instituted. Summons to defendants under *O.* 5, *R.* 20. As there are numerous defendants, one copy to be affixed on court house, another on some conspicuous place. Also proclamation to be made by beat of drum. For 10th July 1917.	Substituted service to begin with. The provisions of Order 1, Rule 8 should have been utilised and 3 months saved.
10th July 1917 . .	Some defendants served, some not served. Served defendants put in their pleas. Defendants of Dipalpur and Sharkpur not served. Case for 4th August 1917 to await return of summons.	
4th August 1917 .	Some defendants served, some not served. Fresh summons to unserved defendants. Served defendants to put in pleas. For 23rd August 1917.	
23rd August 1917 .	Musst. Malan's summons not received back. Case for 2nd October 1917, to await return of summons. Plaintiffs undertake to produce her.	

Date.	Abstract of Orders.	REMARKS.
2nd October 1917	Commission issued to ascertain value of land. Musst. Malan served. Case for 20th October 1917. Parties to deposit Kharcha half and half.	
20th October 1917	Defendants have not paid Kharcha. They should pay Rs. 3/- costs. Case for 17th November 1917.	
7th November 1917	Commissioner's report not received. Parwana to Commissioner. Case for 26th November 1917.	
26th November 1917	Plaintiffs present. Defendants absent. Report not received. *Ex parte* against defendants. For 30th November 1917.	
30th November 1917	Evidence recorded. Claim decreed *ex parte.*	
4th December 1917	Application to set aside *ex parte* decree made for 6th December 1917.	
6th December 1917	File to be sent for 4th January 1918.	1 month for calling the file; the notice could be issued, along with the order calling the file.
4th January 1918	File has come. Notice for 21st January 1918.	
21st January 1918	Applicant to prove his excuse for absence. For 5th February 1918.	
5th February 1918	File is in Copying Department. Call it for 21st February 1918.	It could be called from the Copying Department then and there. The copyists do not work far off.
21st February 1918	2 witnesses' evidence consisting of 2 lines recorded. Rs. 10/- costs allowed. 1st March 1918 fixed for payment of costs.	
1st March 1918	Applicant wants more time for payment of costs. For 9th March 1918.	
9th March 1918	Costs paid. *Ex parte* decree set aside. Summons to defendants by proclamation for 25th March 1918.	4 months lost in this petty matter.
25th March 1918	Commissioner to be called upon to send complete report by 16th April 1918.	Commission was issued on 2nd October 1917 and his report was received on 28th May 1918. Is this sound business? I would have dismissed the commission on the 2nd hearing after his appointment at the most.
16th April 1918	Commissioner's report not received. Call for 29th April 1918.	
29th April 1918	Commissioner's report not received. Call it for 13th May 1918.	
13th May 1918	Process fee for calling the Commissioner's report not deposited by either party. Call the report for 28th May 1918.	

Date.	Abstract of Orders.	REMARKS.
28th May 1918	Report received. Pleaders want to see it. For 7th June 1918.	It is a one paged report and could be seen in 2 minutes.
7th June 1918	Proof of objections to Commissioner's report for 22nd June 1918.	
22nd June 1918	Objections withdrawn by defendant. Valuation by Commissioner accepted. Plaintiff to pay deficient court-fee by 2nd July 1918.	
2nd July 1918	Parties to appear on 15th July 1918 for examination.	
15th July 1918	Parties not present in person. They should come on 9th August 1918.	
9th August 1918	Claim dismissed under Order 9, Rule 8.	The same day; should not have been dismissed so lightly or should have been restored immediately. Plaintiff's excuse was that he went to the Treasury to deposit War loan asked for by the Munsif.
9th August 1918	Application for restoration instituted. Kaifiyat called for	
10th August 1918	Notice to defendant's pleader for 27th August 1918.	
27th August 1918	Defendant's pleader declines to accept service. Proclamation for 9th October 1918.	
9th October 1918	Plaintiff to give evidence of his cause for absence. For 21st October 1918.	
21st October 1918	Plaintiff examined as his own witness and this finished his evidence. Defendant's rebuttal on 6th November 1918.	
6th November 1918	Court closed. Fix for 26th November 1918.	
26th November 1918	Defendant offers no rebuttal. Order on 3rd December 1918.	The order required hardly 2 minutes. Restored after 4 months' harassment.
3rd December 1918	Plaintiff to pay Rs. 4/- costs. Claim restored. Proclamation to defendants for 20th December 1918.	
20th December 1918	No orders.	
21st December 1918	After examining pleaders 3 issues framed :— (1) Is case triable by Rev. Court ? (2) Is the abadi deh partible ? (3) Are plaintiffs estopped from bringing the suit ? Evidence for 17th January 1919.	

Date.	Abstract of Orders.	REMARKS.
17th January 1919 .	Three persons examined and that finished plaintiff's evidence. Defendant offered no oral evidence. Documentary evidence on 30th January 1919.	At this stage.
30th January 1919 .	No copies or documentary evidence filed. Arguments heard. Orders for 13th February 1919.	
13th February 1919 .	Preliminary decree for partition passed.	

APPENDIX 3.

LAHORE.

Members of the Process-serving establishment punished during 1918-19.

Process-servers . .	Suspended for different periods	8
	Fined	2
	Promotion stopped	2
Bailiffs . .	Suspended for different periods	3
	Being prosecuted	1
Naib-Shariff . .	Reduced	1
	Total No. of officials dealt with .	17

JASWANT RAI.

23rd March 1919.

Order.

Complaints are often received from different Civil Courts about defective service of various processes.

Considerable time will be saved if the presiding officers of the courts, before sending the papers to me, call for an explanation from the persons concerned, make a summary enquiry into the matter and then send the report to me clearly *naming* the official or officials at fault, the exact fault proved, and the punishment, which in their opinion should be meted.

I shall then be in a position to take immediate action. To my mind this procedure would considerably improve the process-serving business. I hereby permit all civil courts in the district to call upon any member of the process-serving establishment, for the purpose of such enquiry, for a verbal or written explanation or for any allied object.

Memo., dated 2nd December 1916.

Copy forwarded to the officers named on the margin, and the District Judge, for information and communication to the officials concerned.

(1) L. Maya Ram, Sub-Judge. (2) L. Jaswant Rai, Sub-Judge. (3) R. Br. Damodar Dass, Sub-Judge. (4) Munsif, Lahore. (5) Judge, Small Cause Court, Lahore. (6) Registrar, Small Cause Court, Lahore. (7) Munsif, Kasur. (8) Honorary Civil Judge, Kasur. (9) Munsif, Chunian.

JASWANT RAI,
Senior Sub-Judge, Lahore.

LALA JASWANT RAI, Sub-Judge, Lyallpur, called and examined on Wednesday, the 23rd April 1924.

Sir T. Desika Achariyar.—*Q.* I have gone through your memorandum which has been very carefully prepared. May I put you a few questions upon the suggestions which you have made. You think that the period of 4 months fixed as reasonable duration for suits in this province is not enough?

A. Yes, at least for sub-judges of first and second class. There are bigger cases. They should be given 6 months.

Q. Do you think that 6 months would be the reasonable duration in the case of suits before first and second class sub-judges?

A. Yes.

Q. When you entered service I suppose you entered by competition?

A. Yes, munsif competition.

Q. Had you any difficulty in doing the work without any previous training?

A. Yes. In fact I asked my predecessor to stay one day for me as I went fresh from school. I went with him to court and saw how he got on. I find that most people learn these things from the readers.

Q. You think that most of the newly appointed munsifs learn their work from the readers. I suppose that is a very bad training.

A. Yes. They cannot control the staff because they have got some regard for them.

Q. I think you gave some of them training in 1919.

A. Yes.

Q. You have sent us a copy of your report on that occasion.

A. Yes.

Q. Do you think it is necessary to train them? How did you train them?

A. I have given details of my training. Mr. Justice Chevis gave me instructions on which lines I had to give them training.

Q. I see you took the candidates from the commencement of every case and told them how to examine plaints?

A. Yes. I told them how to write orders.

Q. Then you took them to the stage how issues are settled and then you took them to court to let them see how cases are actually heard?

A. Yes. That I did later on. First of all I told them how to examine the plaint, then the written statement, examine parties and then asked them to frame issues.

Q. After one or two days you took them to a munsif's court?

A. I did that at the last stage. I took them there after a week. The munsif was doing case work and the naib-sheristadar was doing execution work.

Q. The munsif was doing original suits, whereas the naib-sheristadar was doing execution work at the same time—the munsif having nothing to do with it?

A. Of course, at the end of the day when there was a heap of files, about 100 files, the naib-sheristadar put them up to the munsif for signature. All were signed at the end of the day. That is the normal procedure in the Punjab because they get so many cases.

Q. Was that a normal procedure in those days, or is it so still?

A. It is still so.

Q. Is that the case with regard to 1st and 2nd class sub-judges?

A. No. 3rd and 4th class subordinate judges.

Q. It means that the execution clerk deals with everything and gets signature of the court?

A. Of course, if some lawyer wants an order from the court he can have it.

Q. What is the percentage of cases in which that sort of thing goes on?

A. 90 per cent.

Q. And does it not open the gate for corruption very largely?

A. Certainly, and then there is very little realization. In this case there can be no control. The courts receive reports of resistance and in the ordinary course order the naib-sheristadar to issue fresh summons.

Q. Whereas the subordinate judge should at once take the matter into his own hands?

A. Yes. I would send four process-servers and the nazir and would at once try to arrest the man who resists.

Q. Under the present system everything is left to the naib-nazir and it causes delay and also causes corruption?

A. Yes. There is want of realization and want of control.

Q. All these, I think, were the object lessons of your class. You told them to avoid themselves of these pitfalls?

A. Then I took them to the record room and showed them a few files. I have given two copies of order sheets.

Q. I think in one case there were 30 or 40 adjournments?

A. Yes, and most unnecessary.

Q. What is your impression? Do you think that the subordinate judge there is himself more responsible for the delay than the process-servers?

A. Yes. My idea is that it is due to the faulty way of recruitment.

Q. What is the fault of recruitment?

A. People who are given appointments after passing a competitive examination are far better than those who get direct appointments. People recruited by way of competitive examination take more interest and pains in their work than others. They work very hard and try to understand the law and practice.

Q. What sort of competition would you suggest for recruitment hereafter?

A. I would suggest LL.B. examination, and I would afterwards give them some training.

Q. Who would give that training?

A. A senior sub-judge who is experienced may be deputed to do this work.

Q. Supposing there were 40 applicants how would you make your selection?

A. Then I would have an open competition.

Q. What sort of competition?

A. Some essays, some mathematics or law just as we have in the case of Provincial Civil Service and Indian Civil Service examinations.

Q. And after that you would like to give them some training?

A. Two or three months. Not a very long training. I would also give them settlement training.

Q. At present they are given settlement training for three months and they are not given any judicial training?

A. No.

Q. You think training in judicial work is quite as important as training in settlement work?

A. Yes.

Q. You have given two order sheets, are these order sheets prepared in every case?

A. Yes, that is the system in the Punjab. These are called abstract of orders.

Q. What do you call them in vernacular?

A. *Khulasa Ahkam.*

Q. Here is a very simple suit. It was instituted in January 1916 and disposed of in May 1918 and these cases were dismissed with costs.

A. Yes.

Q. I see there are 27 adjournments. Is that usual with third and fourth class subordinate judges?

A. Yes.

Q. How were you able to find out that there were so many adjournments in a particular case? Did you ask for these cases particularly?

A. No, when I enter the record room I examine the records at random.

Q. You seem to have made special study of the question of process-servers?

A. Yes. My idea is that nobody cares for these things. Courts do not consider this work as important. They work like machines. Fresh summons are issued automatically. It is the reader who gives orders. Courts should take more interest in this work. Sometimes address is not correctly given. I have given ten reasons. Process-servers are not alone to blame. Sometimes delays are caused owing to summons being written not by court official but by some volunteers. They are very illegibly written, just as it is done in the canal department. Village numbers are recorded and then there are also branch numbers. Sometimes the village number is correct but the branch number is wrong and so it causes great inconvenience and delay and trouble. I do not think a process-server is worse than a police constable or a patwari.

Q. So the process-server is not only to blame but the blame can legitimately be made to lie on the shoulders of subordinate judges?

A. I should think so—especially third and fourth class subordinate judges.

Q. Is it a fact that in many cases summons are returned unserved and the reader does not look at them?

A. They simply say—summons not served, fresh summons to issue. The reader in some cases does not look for them properly while they are lying on his table. Fresh summons are issued unnecessarily. If the reader takes interest in this matter these things can be put a stop to.

Q. At once the people will become alert?

A. Naturally. I do not find any difficulty.

Q. I see that you want to have three or four courts in order to reduce arrears?

A. Yes.

Q. You say that process-servers served effectively?

A. Yes. I never found difficulty in the way.

Q. You say that it is effected and not opposed at all?

A. Sometimes it does happen.

Q. If the subordinate judge was a little careful?

A. I do not think the subordinate judge could control that thing. But he can find out. He can start enquiries. When I am satisfied that the process fee was not paid, I asked the ahlmad to pay it up.

Q. In your memorandum you mention various factors which retard the service of process. You think that in all those cases the subordinate judge, with a little diligence, could put down the delay?

A. In most cases.

Q. A little time spent upon this will be well spent?

A. Yes.

Q. And prevent much irregularities during the time he presides there?

A. That is my idea.

Q. When you were at Lahore, you seem to have circularised every subordinate judge in the matter of rectification of process service. What did you actually do?

A. They came to me and talked to me about faulty service, etc.

Q. You wanted their co-operation?

A. I told them there was no use grumbling. I authorised them in this matter to call process-servers whenever they found them guilty and report to me at once. But they did not take steps.

Q. They did not co-operate?

A. No.

Q. They will again go on saying—bad service?

A. Yes.

Q. It appears High Court has issued orders deputing process-servers for each subordinate judge.

A. It is a very good system. But it requires that either we should have some more men, or the process-servers should be paid actual travelling allowance and tonga hire. At present they are supposed to walk.

Q. Which they really don't do. Some body pays for their conveyance.

A. Probably in most cases. But we should legalise it when we expect them to go long distances.

Q. So the new system will require more men and will require also travelling allowance paid to them?

A. One of the two things.

Q. Would it not entail the same process-server going to the same neighbourhood or rather more than one process-server going from different courts to the same village?

A. It will be. I think it is better. The process-servers shirk making proper enquiries. If they are directly under the sub-judges, the peons will think that they can be dismissed at any time.

Q. So you think a system under which the peons would be under the direct control of the subordinate judge would work better than the existing system?

A. Yes.

Q. You say of rewarding peons, how would you do it?

A. To draw the attention to the fact, I opened a register putting the names of all officers in the headquarters of the district. I sent the register to all the courts at the headquarters of the district and asked them if they had any concrete cases of process-servers not having served any process in time. So they have to say something and then, of course, I start my enquiry and when I find a delinquent I punish him.

Q. After the disciplinary action taken in that manner, the process-server improved?

A. At least in my court. In other courts they would not give concrete cases.

Q. You say they should be rewarded for good work. I do not follow exactly what you mean.

A. You see we have got in Punjab the bailiff and process-server.

Q. What is the salary of the bailiff?

A. Rs. 20—25.

Q. And of the process-server?

A. Rs. 17. Bailiffs are supposed to make attachments and the process-servers are supposed to execute summons. But as we have got very few bailiffs, what we used to do in cases of attachment of small values is to give them to the process-servers. Instead of giving them to each and every process-server, I selected four best process-servers.

Q. What is the meaning of best process-server?

A. I keep the record of their service; processes served, attached to the door, etc., and find out who has made the largest number of personal service. I appoint the first few as assistant bailiffs for the next three months. That gives them some encouragement and stimulates work.

Chairman.—*Q.* Do they get more pay for that work?

A. No. I call them honorary.

Sir T. Desika Achariyar.—*Q.* They are doing superior work?

A. Yes.

Q. Do they get superior remuneration?

A. By corrupt means, of course.

Q. All the same this method has improved the service of processes?

A. In some cases. The peons are anxious to show that they have effected more personal service.

Q. In what other way do you think the process-service could be improved?

A. I have given my views. The parties should be made responsible for the service of process.

Q. I should like you to develop this.

A. I am not quite sure if this is consistent with the law in the Civil Procedure Code. This should go on a legal basis.

Q. Suppose it is placed on a legal basis?

A. I think it would be useful. At present the parties pay the process fee and run away. Nobody helps us to find out the man. It ought to be one of their duties to help the process-servers to find the man.

Q. I was just requesting you to develop this point.

A. The parties or their agents should send someone to point out the man.

Q. You suggest that a legal responsibility should be thrown upon the party to find out the man?

A. Yes.

Q. Or you want the defendant or plaintiff, whoever wants the person, to take the summons from court and serve it himself?

A. No. They ought to go with the peons and see that it is served.

Q. If I leave it in the hands of parties themselves, I will get false report.

A. Nor would I entrust it to village officials entirely.

Q. To put it definitely, you think that the party should send an agent and it must be made part of the duty of the village officer to help the process-server?

A. To point out the man.

Q. You want the attestation of the village officer?

A. That too. Sometimes our process-servers report, 'so and so is not to be found.' How to believe him?

Q. So you want every process to be attested by a village officer in order to be sure that the process-server did go to the village?

A. Yes. Now it is done in certain cases, because they want to favour their own men. Supposing a man did not want to come and the peon would report that he avoided service and no one attested the report. I cannot take any action on the report of the man. I want that the village officials must be enjoined by effective orders. Under the present orders of the Government, these village officials are supposed to help all Government work. I suggest that there should be a specific clause that it should be the part of their duty to help the process-servers.

Q. The objection would be that the ordinary village official has to do a lot of things?

A. I do not think it would seriously interfere with his other work. Even now they are doing it.

Q. Would you remunerate him in any manner?

A. No.

Q. Only you want to make it compulsory?

A. I want to record it. In the list of duties of village officials I want to add that they should help process-servers.

Q. As it is they think a process of a revenue or criminal court of greater importance—they respect it more?

A. They are doing revenue work.

Q. Would you like to have this done?

A. Yes.

Q. What about the post office? Could it be used for this purpose?

A. It is very useful. But the difficulty is this. When we find that the summons is not served, we cannot proceed *ex-parte*. Sometimes the registered letter is returned to us " refused," then there is difficulty. But otherwise I think this is very useful, because in many cases they are served. In my experience I find that letters by post are generally served.

Q. You suggest in the first place a careful scrutiny by the presiding officer himself?

A. Yes.

Q. Secondly you suggest due encouragement to the persons who do their work properly; thirdly, assistance from village officer and fourthly you would like to supplement ordinary service by postal service?

A. Yes.

Q. Do you think that parties could be asked to bring their own witnesses?

A. No. They should take out summons but they must point them out to the process-servers.

Q. Even in the case of witnesses you would like the process-server to go and serve the witnesses?

A. Yes, the parties as well as the witnesses.

Q. A witness generally appears for the plaintiff or the defendant and an unwilling witness never appears.

A. Of course there is difficulty sometimes. But anyhow we want some man to show the witnesses.

Q. You think that in the case of witnesses also the same procedure must be adopted.

A. Yes.

Q. You can't think of any other procedure?

A. I cannot think of any better procedure.

Q. Are the witnesses who do not appear after they are served, dealt with suitably by the presiding officers?

A. Yes, by strong courts.

Q. Are the strong courts in the majority or in the minority?

A. It only depends upon the interest which the presiding officer takes. If the judge takes interest and he finds that the witness has not come after being served, he will issue a warrant of arrest or attachment.

Dr. DeSouza.—*Q*. At whose instance is the warrant issued—at the instance of the court or of the plaintiff?

A. We, of course, give orders to the process-servers. Then the parties send one of their men to the process-servers.

Sir T. Desika Achariyar.—*Q*. I think the party has to pay the fees for it.

A. Yes.

Q Do you find that a large number of cases are decided *ex-parte* or dismissed for default?

A. I don't think there is a large number. But there are some.

Q. Do you find that the courts, instead of waiting for a reasonable time, in order to show disposal, dispose of the cases *ex-parte*?

A. I have said that some incompetent courts do that n order to swell up the figures. I always wait for one day; for otherwise we get applications to set aside *ex-parte* decrees, and then objections, and have to take a lot of evidence.

Q. You wait till the end of the day.

A. No. I wait till the next day. My experience is that, if I wait one day, there was not a single case which I had to restore afterwards.

Q. Some courts want to dispose of cases and they are proceeded *ex-parte* or are dismissed for default.

A. Yes. They are hasty.

Q. In the records which you selected at random, did you find any such case?

A. Yes, I found one.

Q. These things might well be impressed on the sub-judges.

A. Yes, as part of the training.

Q. Do the sub-judges adjourn cases when they have the slightest provocation?

A. I don't say all do that. When you find that cases are adjourned from day to day, I think it will be their fault. Competent courts won't do like this. They ought not to do it.

Q. Do people sometimes come and say that they want to refer the matter to an arbitrator?

A. Sometimes.

Q. Instead of waiting for one or two hearings they wait for months and months for this arbitration and eventually no arbitration takes place?

A. Yes. It is also one of the causes of delays.

Q. Sometimes they appoint commissioners for no sufficient cause?

A. Yes.

Q. The tendency to have commissions issued on every possible pretext should be discouraged. I suppose the tendency prevails?

A. Yes, there is in some courts.

Q. The whole thing is that, if a suit is difficult, they say "Let a commission be appointed." Some sort of excuse is devised in order to avoid a difficult suit.

A. Not exactly so. In some cases of partition of houses and lands the market value has to be found out and in suits on accounts also commissions have to be issued.

Q. In the matter of accounts why should not each party do it?

A. The usual system is to appoint a commission.

Q. In simple suits could not the parties be asked to file an abstract?

A. When we find that the suit is upon accounts, it is sent directly to a commissioner and he has to go into the accounts and sometimes it is compromised.

Q. Don't you think that the tendency to issue commissions on the slightest pretext should be put down?

A. Yes.

Q. With reference to arbitration is the consent of the arbitrators taken beforehand?

A. Not generally.

Q. When do you discover whether the arbitrators did consent or not?

A. After some hearings we get a reply that he is unwilling to do it.

Q. Sometimes months elapse before you get that information.

A. Yes, sometimes.

Q. You think that the sub-judges might be more careful in having this done soon?

A. Within one hearing he must be in a position to know definitely.

Q. With regard to execution of decrees, you said already that execution work is not done by sub-courts.

A. Yes.

Q. Having regard to the large amount of work which is turned out by sub-judges do you think that execution work could be done by a separate court?

A. I don't favour that idea.

Q. It appears the High Court is collecting views upon that proposal.

A. I don't know even that. I don't think it will help much.

Q. What do you think has to be done in order to speed up expedition?

A. The only thing is not to give to revenue officials the work of attachment and sale of lands. We should do it ourselves.

Q. The sub-judges should be given power to deal with execution in those cases.

A. Yes.

Q. You say that if an ordinary Assistant Commissioner does the work there is no reason why the sub-judge should not do it.

A. Yes. Only the tahsildars do it.

Q. Your opinion is that if tahsildars could be entrusted with that work there is no reason why the sub-judges should not be asked to do it.

A. Yes.

Q. You think that, if sub-judges were asked to execute decrees in this manner there will be less delay and there will be speedy realisation.

A. Yes. There won't be any difference in that way.

Q. Is there any sort of competition between the revenue and civil authorities?

A. That depends upon the personalities. In some districts it is so.

Q. So far as you are concerned you never experienced any difficulty.

A. Only once in my younger days.

Q. It seems that in many cases the revenue authorities make out that very little profit can be had from the lands, that they want so much for the maintenance of the family, so much for the maintenance of cattle and so much for the house and very little is left for the decree-holder eventually.

A. I don't find fault with that. We could protect the interests of the zemindar and of the Government. I say that there is an absolutely needless delay.

Q. So you want that rules of the Civil Procedure Code must be suitably altered?

A. Yes.

Q. With regard to limitation provided for by section 48, do you think that the period should be reduced from 12 years to 6 years?

A. No, I am not in favour of this.

Q. As regards steps in aid of execution provided for by Article 182, do you want them to date from the last application?

A. No, they should date from the final order passed.

Q. So you agree with one of the suggestions?

A. Yes.

Q. Do you not think that applications are filed merely to keep the decree alive?

A. Yes, sometimes, but there is no harm.

Q. With regard to the executing court, would you give it the same powers as the court passing the decree has?

A. I have no objection to it.

Q. Do you think that there should be attachment and sale proclamation at the same time and that one notice is sufficient?

A. Yes, I quite agree to the suggestion.

Q. With regard to various notices, do you think that they can all with advantage be dispensed with?

A. Yes.

Q. When an appeal is pending or an application for stay of execution is made, do you think that execution is at once stayed?

A. Yes, by higher courts.' I do not see it always, but sometimes.

Q. How would you prevent such a thing being done?

A. Higher courts should not stay execution unless they consult the lower court whether the security furnished is sufficient.

Q. Do you suggest that in every case a report must be called for from the lower court?

A. Yes, because the first court knows the case fully and knows both the parties. The higher court knows only one party.

Q. And if it is an urgent matter? It may be a question of marriage of a girl, or cutting of a tree, or demolition of a verandah and a main wall of a house.

A. A telegraphic message can be sent and it will not take much time. These things can be decided in a very short time.

Q. So on the whole you think that the higher court must consult the lower court?

A. I know sometimes when litigants find that the judge is going against them they at once move the High Court or the district judge for transfer of the case. What they would do is that they would send for the records and keep them pending for months or years together. I have seen cases shelved for several years and when the judge is transferred the case is sent back. I have seen cases kept pending for months and months without any orders. Whenever there is such a case, I at once write a demi-official letter to the Registrar, High Court. It is not usual but there are some cases of that sort.

Q. In all such cases, the remedy is that they should not do anything without first getting the report of the subordinate courts?

A. There should be some standing order that transfer applications should be decided at a very early date. I know these things are sometimes managed by underlings. These things do not take long time to decide and early steps should be taken to dispose them of.

Q. So the remedy here is also the same.

A. Yes, telegraphic message may be sent and the opinion of the lower court asked for.

Q. With regard to mortgage decrees in simple mortgage suits, do you want both the decrees, *i.e.*, final decree and preliminary decree?

A. They should all be merged into one and that would make for speed.

Q. I see from your memorandum that you have not answered the last 10 or 15 questions of the questionnaire. What is your opinion about *benami* transactions?

A. I did not like to go into details of those questions. I confined myself to two points. I want to discourage *benami* transactions.

Q. Do you agree to the suggestion that partitions should be evidenced by documents and that such documents should be registered?

A. Yes.

Chairman.—*Q.* Would you just tell me how many candidates were in the class you trained in 1919?

A. Five candidates.

Q. How long did that take you?

A. One week.

Q. Why?

A. On account of expense.

Q. How much did it cost?

A. I cannot say exactly.

Q. Do you not think that the expenses incurred were quite trifling as compared with the good the scheme would have done?

A. It would have been worthwhile.

Q. But can you not exactly say how much it cost for those seven days?

A. There were only five men and we had to pay their travelling allowance from the stations they came and it amounted to Rs. 500. Then their pay for one week. I think it came to Rs. 700 on one week's training.

Q. On the average how many judges are appointed every year?

A. I have no idea, but I think not more than three or four.

Q. With regard to training of candidates you would like to have LL.Bs.?

A. Yes. At present LL.Bs. are taken.

Q. Do you not think it would be a good plan also to insist upon some more practical legal training, that is to say, apart from the learning of theoretical law and so on which presumably they do for the LL.B., they should have some practical training in drawing plaints, drawing interrogatories and so on?

A. Yes, I would have it as part of the judicial training.

Q. Would you not have it as part of the academic training?

A. No. I would ask them to frame issues.

Q. In the Punjab you have been judicial officer for some time. Do you find that there was a doubt about the incorruptibility of some officers in the Punjab—I am not asking you with regard to individuals?

A. I think there are a few, not many. Of course there are judges who are competent.

Q. I am not so much thinking of efficiency. A man might be quite honest and probably inefficient. What I am thinking of is the man who is not honest?

A. There are.

Q. Have you ever thought of the extension of powers that might be given to judicial officers in the province?

A. I think their powers might be raised to Rs. 1,000 quite safely.

Q. What about small cause court powers?

A. We have got now powers up to 500 rupees in three important towns of Amritsar, Lahore and Delhi.

Q. But not many judges in the province have powers beyond Rs. 250?

A. Only three in the province.

Q. What would you say to give a general extension of small cause court powers up to the present limit of Rs. 500?

A. I would not give powers to 4th class officers.

Q. Up to Rs. 250?

A. Yes.

Q. I take it that not much is gained by increasing the powers of the senior sub-judges from Rs. 500 to Rs. 1,000?

A. Yes.

Q. The small cause court jurisdiction under the Act is Rs. 500. Would you be in favour of raising it to Rs. 1,000 in the case of senior subordinate judges?

A. That might be done. In any case I am not in favour of extending the jurisdiction of the 4th class sub-judges from Rs. 500 to Rs. 1,000.

Q. Have you ever thought whether anything could be done as regards small value suits not of the small cause court type, by way of limitation of appeal or anything of that sort?

A. I would not curtail any right of appeal.

Q. Why is that? Don't you think sometimes it is rather a sham that a man has to go through three trials?

A. Even now the High Court objects to it. I would rather give the litigant the satisfaction of going to the highest court.

Q. Every appeal involves the respondent in trouble and delay. I am not thinking of frivolous appeals. They can be dealt with by Order 41, Rule 11. But don't you think it would be better in small suits to give a man trial in one appeal and finish it if the first appeal can be made strong enough and good enough?

A. In the Punjab province the people won't like it. It would be unpopular. They pay their full court fee.

Q. But the poor respondent does not get the court fee. Supposing I bring a suit for something worth Rs. 50 and then succeed. Then the other man can keep me waiting for three years: First an appeal, then another appeal?

A. Compensation might be provided.

Q. What is your idea of raising the limit for first appeals in the district court, say, up to Rs. 7,500? Are you in favour of that?

A. That might be done; there is no harm in that.

Q. On questions of law?

A. Yes.

Q. Can you tell me that if all the courts were fairly expeditious and competent, there ought to be no arrears in the Punjab?

A. Yes.

Q. I mean the file is not so congested that a proper court cannot cope with it?

A. If there are competent people, they would be able to cope with it.

Q. If there is too much work then even a competent officer cannot be expected to finish it expeditiously.

A. The High Court arranges for it. Supposing a sub-judge has light work, then the High Court sends more work.

Q. So that courts in this province are not burdened with more work than they could do?

A. In the 4th class sub-judges' courts there is more work. I would increase the strength of the sub-judge's staff.

Q. You think that the real congestion is in the lowest court?

A. Yes. I do not think first and second class judges are over-worked.

Q. Then they ought not to be in arrears?

A. Ought not to be. Even now in good courts I do not think there are arrears. Wherever I have gone after a good worker his file is not heavy. Wherever I go to a bad worker his file is always heavy.

Q. As far as you are concerned, you do not think the file is really unduly congested or that the staff of the courts is too small except in the case of the lowest class subordinate judges, who ought to give more attention to execution work and this might require some addition. Is that the position?

A. Yes.

Q. Don't you think it really interferes very much with your work if you do execution work?

A. No.

Bakshi Tek Chand.—*Q.* With regard to the ministerial establishment attached to the subordinate judges, do you find that sufficient, or do you find the ministerial establishment insufficient?

A. They require more staff.

Q. How many at present?

A. They have one reader, one ahlmad, one naib-shariff and in some courts madad naib-shariff too. I would put four men in every subordinate judge's court.

Q. In the headquarters or in outlying districts?

A. In headquarters at least 4 men.

Q. In outlying districts you might require another man?

A. I am not quite sure.

Q. With regard to senior subordinate judges' establishment?

A. They are quite sufficient.

Q. That does not require any strengthening?

A. Yes. My own experience is that if I were given a shorthand-writer I could do the work of two judges.

Q. Your suggestion is that senior sub-judges should be given shorthand-writers?

A. Yes.

Q. What about keeping double records?

A. I am against it. One record would be sufficient.

Q And that be kept in English?

A That depends upon the judge.

Q. At present the district judges are over-worked?

A. Yes.

Q. How would you give them relief?

A. I would transfer all guardianship cases, succession certificate cases, etc.

Q. What about probate work? Can it go to senior sub-judges?

A. I have no idea of that work.

Q. With regard to land acquisition cases, you think they can be safely given to senior sub-judges?

A. Yes.

Q. In other words you would revert to the practice that prevailed here in 1914 by which the district judge of the old style had cognizance of the whole thing?

A. Yes.

Q. You are quite satisfied that the senior subordinate judges will be quite competent to deal with this sort of work and give satisfaction to the litigant public?

A. Yes.

Q. What is your opinion as to Insolvency Law? Is it being used or abused by fraudulent and dishonest judgment-debtors?

A. Well, as I suggested in my statement, we ought not to stay execution until the man is actually adjudged insolvent. Execution against him should proceed until there is the actual order of adjudication.

Q. Won't that work hardship in some cases?

A. I do not think so.

Q. Have you any other suggestion with regard to the Insolvency Law? Are you quite satisfied with the amendment that was made in the law?

A. I am not quite satisfied. The people do abuse this. Even now the new amendment has not much improved matters. Now it is very difficult to prove whether he is insolvent or not.

Q. What suggestions will you make?

A. I have none to offer.

BURMA.

Evidence recorded at Rangoon and Mandalay.

PRESENT:

The Hon'ble Mr. Justice G. C. Rankin, Bar.-at-Law—Chairman.

The Hon'ble Mr. Justice L. Stuart, C.I.E., I.C.S.

Dr. F. X. DeSouza, Bar.-at-Law, I.C.S.

Sir T. Desika Achariyar, Kt.

Mr. H. F. Dunklay, I.C.S., Bar.-at-Law, District and Sessions Judge, Bassein.

Mr. P. N. Chari, Pleader, High Court, Rangoon.

Mr. C. V. Krishnaswami Ayyar—Secretary.

List of Witnesses examined in Rangoon.

Wednesday, 30th April 1924.

*1. Mr. T. F. R. McDonnell	Bar.-at-Law, Rangoon.
2. Maung Tha Zan U.	Assistant Judge, Pegu.
*3. Mr. J. Hormasjee	Taxing Master and Official Referee, High Court, Rangoon.

Thursday, 1st May 1924.

4. Maung Ba Thein, B.Sc., B.A., B.L., M.L.C.	Pleaders, Rangoon.
5. Maung Tun U.	
*6. Messrs. A. McKeand, J. Morrison and S. E. Golding.	Representatives, Burma Chamber of Commerce, Rangoon.
*7. Mr. Chan Chorkhine	Representative, Chinese Chamber of Commerce, Rangoon.

Friday, 2nd May 1924.

*8. Maung Tha Din Gyi	Officiating Chief Judge, Small Cause Court, Rangoon.

Saturday, 3rd May 1924.

9. Mr. K. C. Bose	Bar.-at-Law, Insein.
10. U San U	Pleader, Insein.
11. Mr. A. J. Robertson	Bar.-at-Law, Rangoon.

Monday, 5th May 1924.

12. U. Phaw	Pleaders, Insein.
13. Mr. A. C. Nicholas	

Tuesday, 6th May 1924.

14. U Tha Din	Retired Extra Assistant Commissioner, Insein.
*15. Mr. B K. Basu	Secretary, Pegu Bar Association.
16. Maunga Ba U, A.T.M.	Additional and District Judge, Hanthawaddy and Insein.

Wednesday, 7th May 1924.

17. Mr. R. B. Chatterji	1st grade Pleader, Prome.
18. U. Shwe Hman	2nd grade Pleader, Prome.
*19. C. R. M. M. Muthukaruppan Chettiar.	Money-lender, Prome.
20. Maung Ba Gyi	Subordinate Judge, Prome.

Thursday, 8th May 1924.

21. U Po Lin	Trader and Land-owner, Thonze.
22. U Po Zcm	Secretary, Tharawaddy Bar Association.

Friday, 9th May 1924.

*23. Mr. P. N. Chowdhury, B.A., B.L., M.L.C.	Representative, Bassein Trades Association.
24. Mr. R. P. Sen	Representative, Bassein Bar Association.
25. U Se Maung	Head Broker and Honorary Magistrate, Bassein.
26. Maung Ba Maung	Managing Proprietor of U Ba Maung Co., Henzada.

Saturday, 10th May 1924.

27. Ko Ba E	Pleader and President of Maubin Municipality.
28. Maung Ke Nyun	Land-owner and Trader.
29. U Sein	2nd grade Pleader, Pyapon.
30. U Ba Thin	Land-owner, Kyaiklat.

Monday, 12th May 1924.

31. Mr. P. D. Patel, Bar-at-Law	Representative, Rangoon Trades Association.
32. U Po Lu, M.L.C.	Pleader and President, Maungmya Municipality.
33. U Yan We	Land-owner, Myaungmya.
34. U So Min	Tenant of Labut-talokkyi, Mawlamyainggyun Township.

Tuesday, 13th May 192

35. Maung Ba Than	Sub-Judge, Bassein.
36. Maung Ba San	District and Sessions Judge, Bassein.
37. Mr. W. B. Abreu	Pleader, Thaton.
38. Saw Pa Dwe	Bar.-at-Law, Thaton.

Wednesday, 14th May 1924.

39. Mr. L. H. Wellington	2nd grade Pleader, Tavoy.
*40. Mr. A. J. Darwood, I.C.S.	District and Sessions Judge, Amherst.
*41. Mr. T. S. Nagppa Chettiyar	Representative, Nattikottia Chettiyar Association, Rangoon.

Friday, 16th May 1924.

42. Maung Maung	Mill-owner, Oktwin.
43. Maung On Pe	Land-owner and Chairman, District Council, Toungoo.
44. Mohamed Hoosein	Contractor and Honorary Magistrate, Toungoo.
45. Mr. J. N. Surty	Pleader, Rangoon.

Saturday, 17th May 1924.

*46. Mr. A. S. Gilbert, I.C.S.	District and Sessions Judge, Tharrawaddy.
47. Mr. E. Hay	Representatives, Rangoon Bar Library Association.
48. Maung Pu	
*49. Mr. P. K. Roy	Representatives, Moulmein Bar Association, Amherst.
*50. Maung Tun Win	

Monday, 19th May 1924.

51. Maung Chit Ti	Trader, Pyinmana.
52. Maung San Hla	Trader, Kyidauggan, Pyinmana, Township.
53. U Po Tin	Broker and Honorary Magistrate, Myingyan.
54. Mr. G. H. Witkins	Pleader, Myingyan.
55. Mr. M. R. Gopalan	Representative, Advocates'. Clerks Association, Rangoon.

List of Witnesses examined in Mandalay.

7th May 1924.

*1. Mr. A. G. Mosely, I.C.S.	District and Sessions Judge, Mandalay.
*2. U San Lin	Chairman, District Council, Shwebo.
*3. Mr. Bonnerjee	Secretary, Bar Association, Shwebo.
*4. Mr. J. N. Basu	Representatives, Bar Association, Mandalay.
*5. Mr. L. K. Mitter	

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*Written statement and oral evidence printed.

8th May 1924.

6. Mr. S. B. Sen	1st grade Pleader, Kyaukse.	
7. Maung Kan U	2nd grade Pleader.	Representatives, Bar Association, Sagaing.
8. Maung Hla	3rd grade Pleader	
9. Maung Po Aung	3rd grade Pleader, Kyaukse.	
10. Maung San Pe	2nd grade Pleader, Myitha Township in Kyaukse District.	

Written statements printed of—
1. The Hon'ble Mr. Justice C. P. R. Young
2. The Hon'ble Mr. Justice B. H. Heald
3. The Hon'ble Mr. Justice W. Carr

not examined.

Mr. T. F. R. McDONNELL, Bar.-at-Law, Rangoon.

I.

Written Statement.

1. (*a*) Original suits, commercial and others, five or six months.

First appeals, six months.

Second appeals, six months.

Miscellaneous appeals, 4 months.

We have no views as regards District and Sub-Courts and District Munsif's Courts. This depends so much on local conditions.

Small causes, two months.

2. In our opinion the period taken for the disposal of the proceedings exceeds very often a reasonable limit. The cause of the delay is largely due to shortcomings on the administrative side of the Courts. The process-serving, copying and clerical establishments, we are inclined to think, are generally undermanned and probably underpaid and there is not likely to be much improvement until these establishments are put on a proper basis.

3. We think that when a summons is unserved, an enquiry should be made by the Judge as to why it is unserved and possibly if the fault lies with the plaintiff the power of fine should be vested in the Judge; if the fault lies with the process-server some small punishment might be inflicted on the process-server.

7. We think an undue anxiety, as is sometimes observed, on the part of some judicial officers to clear their files may lead occasionally to ignoring the interests of suitors. While to some extent it is possible to judge of an officer by the amount of his work, we would strongly deprecate any definite standard of efficiency being laid down which would have relation solely to the actual amount of work put through. It is not so much the amount of work which, in our opinion, should weigh in the case of an officer's promotion as the quality of his work.

8. So far as this province is concerned, we think that it would be very much better if there was more concentration instead of less. Waiting for members of the legal profession is practically unknown as far as we are aware.

12. We do not consider it desirable to relieve the District Judge of miscellaneous work (*a*) Judicial; (*b*) Administrative. Very often this miscellaneous work of both descriptions is more important than the ordinary regular suits which he is trying.

13. We would not invest Sub-Divisional Judges with jurisdiction to try Probate and Succession Certificate Proceedings and Land Acquisition Proceedings. These are very often of enormous importance.

18. Having regard to the standard of work of the Lower Courts, we do not think the right of appeal is granted in too many cases in this country.

19. This is a somewhat delicate matter, but we are very strongly of the opinion that the right of appeal under the Letters Patent from the judgment of a single Judge is necessary.

21. We think such a suggestion might cause very serious injustice to poor people. The same applies to the suggestion contained in 23 (1).

25, 28, 30. Any alteration in the present system would require very careful consideration as we have known a number of cases in which decrees have been obtained by fraud, when the defendant has never been served at all.

29. We consider such a rule would be most useful.

32. Order 10 is practically a dead letter as far as we know. It certainly is not observed in the High Court. Orders 11 and 12 are used by senior Advocates but we are very doubtful if an examination of the parties as suggested in Question 33 is desirable.

37. We are strongly opposed to the suggestion that Courts should have discretion to enforce a time-limit for the examination and cross-examination of witnesses. It is impossible to measure out, by hour or minute, the time necessary for an efficient examination-in-chief or cross-examination of a witness. Judges should be appointed with sufficient personality to control proceedings before them. The making of a rule of this kind might cause serious injustice.

43. Here again no rule can be laid down. There are cases which require only a few lines of judgment. There are other cases, the hearing of which may not last long but which may require elaborate examination of many authorities and principles, and the judgment is necessarily long. It would be a most fatal thing to lay down a standard of length for a judgment.

44. The answer is in the affirmative.

45. No delay has been caused by such a practice in Burma. The dates are fixed by the Judges themselves.

46. Such a consultation invariably takes place.

47. The length of such examination could not be controlled except by giving a commissioner powers which he is probably not capable of exercising. We should not insist on interrogatories ordinarily. Examination on commission by interrogatories is very often unsatisfactory.

48. We do not consider a written application supported by an affidavit for adjournment should be always insisted on. In our opinion such applications in most cases are not made in this province on unreasonable grounds.

50. In our opinion the District Judges should be supervised by the High Court a great deal more than they are. There appears to be very little inspection done in this province by the High Court. This we consider regrettable.

82. We think the course suggested is a dangerous one although frivolous suits are not infrequent. We would suggest that exemplary costs should be awarded part of which might go to the Court and part to the aggrieved party. The present scale of costs, although recently amended, is absurdly inadequate.

85. We would certainly not agree that the Court should have the power to refer to a referee cases without the consent of both parties.

86. We do not consider the multiplication of law reports interferes with speedy justice as the official reports often omit important rulings. We consider the unofficial reports very often of great assistance owing to the deficiencies of the official reports and we cannot see why any attempt should be made to cut down the number of reports which may be quoted. There is a special reason which applies to Burma for not neglecting unofficial reports

Criminal appeals in this province, with the exception, we believe, of murder appeals, are tried by single Judges in spite of the importance of the issue sometimes involved. This, we understand, is frequently not the case in India and we think that the unofficial report of two Judges of the High Court in India is at least as useful as the official report of one judgment of one High Court Judges in Burma.

67. We do not believe a codification of the law helps to make justice speedy and economical any more than it helps to make the law clearer or more definite. It is a matter of opinion whether it would not have been better for India if there had been no codes, and the common law had been introduced.

II.

We annex hereto a few general observations on the law's delays in Burma.

In our experience delay occurs after filing a suit. *First* in getting process served; (1) Because the Courts take an unnecessarily long time in issuing summonses; (2) because process-servers are not always available; (3) because defendants evade service and substituted service is not granted soon enough.

The High Court practice is the cause of (1); while in the Small Cause Court (2) and (3) frequently occur.

There should be a severe penalty in the way of costs on a defendant when substituted service has to be granted, if the court has reason to believe the defendant is keeping out of the way.

Second.—By giving too long a time to defendants for filing their written statements.

Third.—By not having a summons for directions after filing pleadings.

Fourth.—By delay in making up decrees and issuing copies. In non-contentious probate cases there is gross delay in the High Court at present.

There is a practice which obtains in the Courts in Burma which, in our opinion, may lead to inefficiency and possibly to delay. We refer to the practice of promoting an officer from one branch of the administrative side of the Courts to another. For example, an efficient interpreter instead of having his pay increased is promoted by being appointed an Assistant Registrar or a bailiff. This is necessitated apparently by the limits of pay which are laid down for the various departments. These limits should be revised to allow of officers who have proved their capacity not to lose in prospects while continuing to do work in the sphere for which they are best fitted and for which they have been specially trained.

Mr. T. F. R. McDONNELL, Barrister-at-Law, Rangoon, called and examined on Wednesday, the 30th April 1924.

Chairman.—You have been at the Bar for good many years since I last saw you.

Mr. McDonnel.—*A.* Yes, for 22 years.

Q. Have you many members at the Bar at Rangoon?

A. I think there are some hundred members approximately in the Bar Library Association which is confined specially to pleaders of the High Court.

Q. Has your practice been in the city of Rangoon almost entirely or have you gone out into the districts also?

A. I have gone out in the districts also. Once I practised for three months in Bassein.

Q. Is that in criminal cases or in civil cases?

A. In both.

Q. I do not suppose you have got the statistics of litigation of your province. I am not going to ask you questions about that. But in the first place can you tell us, in your own way, what do you think to be the chief causes of delay in Burma and the chief difficulties in getting justice done in this province?

A. I do not think inefficient justice is done. I think slow justice is given but I think justice on the whole is given efficiently. The causes for delay are administrative rather than judicial. In my note I have said that the process-serving and the copying departments are in need of improvement. It takes a considerable time, very often, to get a summons served. Then there are little matters, such as time given for filing written statement is very often inordinately long. There is a rule in the High Court—I think I am right in saying that—that there must be three clear weeks before the written statement is filed. I see no reason why in simple suits it should not be filed earlier. Great inconvenience is caused to parties by these delays.

Q. So far as the Original Side of the High Court is concerned if one brings a case to-day, in which there is a *boná fide* contest, how long will it take to get it on for hearing?

A. I should say approximately from five to eight months in an ordinary case provided there were no commissions. I am talking more of commercial cases in which my work chiefly lies.

Q. Then, so far as you know, is there any complaint on the part of the commercial community in Rangoon as regards the delay in deciding original suits on the Original Side of the High Court?

A. There are grievances. The commercial community considers that it should be speeded up.

Q. How many Judges, as a rule, are engaged on the Original Side?

A. Two.

Q. And of these one is engaged on the commercial list and the other on the general list?

A. That is the rule but it is not always, I think, entirely carried out.

Q. Is the great part of the original work commercial in this High Court?

A. If you look to the number of cases there are more non-commercial cases than the commercial cases but I am inclined to think that commercial cases take up more time.

Q. In Rangoon itself are the non-commercial cases of any special type—land suits or mortgage suits?

A. Non-commercial cases in Rangoon are Burman Buddhist Inheritance cases.

Q. Is there a difficulty in ascertaining the family law or a difficulty in ascertaining the facts?

A. I think in ascertaining the facts.

Q. We will get from other witnesses the exact time for which the cases are pending but in the High Court dealing first of all with commercial cases have you any suggestion for reform which you would like to put forward?

A. I have made certain suggestions in my note. I suggest that there should be less time taken for filing of written statement, and I also suggest that more attention should be paid to the process-serving in the High Court and in the other Courts. The Courts also take unnecessarily long time in issuing summonses. Then I think where it appears to a Judge that the defendant is deliberately evading service a fine ought to be inflicted in the shape of costs. Then I am inclined to think that summons for directions is desirable which we have not got. I believe it has been introduced in Bombay but I am not quite sure.

Q. Something of the sort has been introduced in Calcutta.

A. I was not sure. Then I think something should be done in the way of securing execution more efficiently. If a decree is passed in Rangoon the defendant gets a taxi and goes about 8 o'clock to some garden outside the original civil jurisdiction of the High Court and by that means he is able to evade. My suggestion as regards execution is that method for execution ought to be simpler. If I want to arrest on criminal warrant the defendant gets the warrant in Rangoon. That warrant is issued to the District Superintendent of Police and the man is arrested. If it is a bailable warrant he is brought before the District Magistrate. I see no reason why a similar system should not be adopted in civil arrests. The warrant can be handed over to the process-server and the process-server can be sent out by train to Prome and the man could be arrested. It may be arranged that security should be given for his attendance in Rangoon two or three days later. I am not able to understand why there should be the same clumsy method everywhere of having a certificate of satisfaction and obtaining a copy of the decree. No real injustice could be done if the High Court has sufficient number of process-servers so that they may be sent out within the extraordinary jurisdiction of the High Court.

Q. In arresting the judgment-debtor is there any breach of the peace? Is there any resistance offered when the judgment-debtor is going to be arrested?

A. I have heard of one case only in which there was breach of the peace and I was myself present at that time. But it was of such a trifling nature that no special attention had to be paid to it.

Q. When an execution process is served up-country, do you think that the whole village turns up to help the defendant?

A. I have never heard of that.

Q. Have you in force on the Original Side Order 37 relating to Bills of Exchange?

A. Yes.

Q. Apart from Order 37, R. S. C., have you any procedure for a summary judgment on the lines of Order 14?

A. No sir, we have not.

Q. I think in ejectment cases where there is no sensible defence that may be a very suitable remedy?

A. Of course, but we have the Rent Act.

Q. Even under the Rent Act I take it there are numerous cases where the man is not entitled to protection since he has not paid the rent?

A. Yes.

Q. As regards accounts on the Original Side, are there a great many references to the Registrar or Master?

A. Not great many.

Q. So you have no complaint in particular in that connection?

A. Certainly not, since the practice has been changed. Before this practice accounts used to be taken by legal practitioners in Rangoon as commissioners. Now the accounts are taken by the officer of the court and there are not many complaints.

Q. So far as you know there is no delay in this connection?

A. I do not think so.

Q. Have you any special rule or practice on the Original Side as regards the substitution of heirs or the appointment of guardians *ad litem*?

A. There is no special practice. I think we follow the terms of the Code.

Q. Do you find many cases in which the first man called upon refuses to act and then the notice goes to somebody else?

A. I have heard of one case only and that was rather a striking case.

Q. I think you see no objection to the notice going to all the possible people and the Judge deciding in the presence of all so as to avoid delay caused by the refusal of persons called upon to act?

A. I see no objection to that.

Q. What is the practice here with regard to interrogatories, notices to admit documents, etc.?

A. Here they use to a large extent interrogatories and affidavits of documents. Notices to admit are rare. Interrogatories and affidavits of documents are almost invariably called for.

Q. Does a separate chamber Judge sit to deal with these matters apart from such matters dealt with by the Registrar?

A. He does not sit in the chamber, but sits in an open Court on Monday morning.

Q. Who deals with the ordinary interlocutory work on the Original Side?

A. The Deputy Registrar.

Q. Surely there is an appeal from his order to the Judge in the chamber?

A. Yes, sir.

Q. Now as regards non-commercial work, is that work dealt with in the same way as commercial work?

A. Yes. They use discovery etc. to a lesser extent in non-commercial cases.

Q. In the High Court, do you think there is any such thing as settlement of issues?

A. When a case comes up for hearing issues are settled.

Q. When are the issues settled? Are they settled at the end?

A. I should think after the counsel for plaintiff has read his pleadings.

Q. Do you think that in the mofussil one day is fixed for that purpose?

A. I must say that this system in the mofussil is responsible for a great deal of waste of time. I think on the day the case is called, the plaint and the written statement are read and the Judge with the assistance of advocates frames issues. Issues fixed in this manner are often incomplete and unsuitable, and in my opinion that leads to further delay.

Q. When that takes place, is it the practice of the Court to examine the parties with a view to minimise delay or do the Courts accept whatever issues are tendered on behalf of the parties?

A. I have never known District Courts examining parties. As far as I know this procedure is not carried out in this province.

Q. As regards pleadings, apart from the High Court pleadings, in District Courts, are they reasonably well drawn?

A. I think on the whole they are fairly well drawn. Cases there are of simple character.

Q. Do you think that they cause any inconvenience?

A. No, I do not think so.

Q. Is it the practice in District Courts to frame issues as they are suggested by either side?

A. The Judge will say the case is a complicated one and he will be glad if the parties could among themselves arrange to settle the issues and if the issues appear reasonable to the Judge, he accepts them for the time being.

Q. Do you think that the subordinate judiciary in this province is overworked?

A. Yes, indeed. Not only the subordinate judiciary but the superior judiciary also.

Q. How does the Sub-Divisional Judge manage his daily list?

A. It is a long time since I appeared in a Sub-Divisional Court. They, I think, try cases up to the value of Rs. 5,000. I think they begin by taking up miscellaneous work, but in some courts they fix special days for this work, for instance, Mondays or Fridays.

Q. Then as regards the list of cases, do you think the list is an unreasonably long one and that many cases have to come up again and again for hearing? Have you any such difficulty in sub-divisional courts?

A. Advocates who have some experience would not summon their witnesses for a case which is at the bottom of the list. They would realise that it would be a waste of time and money to summon their witnesses.

Q. Why should he put that case down on the list at all? Why are such cases put down if they are so hopeless that the advocate would not mind risking it? What makes Judges do that?

A. I think it is a sort of idea that it gives them a warning that the time is coming for the case to be reached. I think I must correct that because that would not apply to districts where you have definite dates for hearing. In High Courts that is the motive.

Q. Will you be able to tell us whether the repeated bringing of witnesses is in fact a nuisance or not?

A. I do not think I am qualified to answer that, because most of my district work has been criminal. I certainly think this was in criminal cases.

Q. In the High Court you do not fix more cases for a day. You have a list and as cases go up to top of that list, people get ready?

A. Yes.

Q. Apart from the High Court when you go out to the district and the case lasts for more than a day, do they deal with it or give an adjournment?

A. Sometimes an adjournment is given two or three months hence.

Q. What is the necessity for that?

A. I think the reason is too slavish an adherence to the Civil Procedure Code.

Q. Is there any reason why in Burma judges should not be ordered to hear cases *de die in diem?*

A. I do not see any reason why you should not have the same system in the district as you have in the High Court.

Q. If a witness has come on Tuesday or Wednesday, and he is not called until Friday, he has to hang about the court-house for about a week. Is it not a terrible hardship on the people?

A. It depends very much on the season of the year and on the class of the witness. It would cause great hardship to the cultivator, when he is wanted in the fields, naturally.

Q. Except, perhaps, for reasons of that sort it may be heard *de die in diem?*

A. Yes, it could be done.

Q. You take it in certain times of the year it might be hard for some witnesses?

A. Yes.

Q. You have some experience of second appeals in the High Court from the districts?

A. Yes. I used to have.

Q. What is the arrangement in this Court as regards that? I take it there is a second appeal on a point of law from any case which is not of a Small Cause Court type. If it is tried by Small Cause Court procedure then, of course, there is no appeal. If it is not tried by the procedure then there is no second appeal under 500 rupees. In that class of cases what happens here? Is it tried by a single Judge, and if so, up to what figure?

A. I think all such cases up to Rs. 3,000 are tried by single Judges.

Q. Above Rs. 3,000 and up to about Rs. 5,000, I take it the appeal is heard before a Bench?

A. I believe that is so.

Q. Above Rs. 5,000 I think the first appeal is preferred direct to the High Court?

A. Yes.

Q. In cases where the first court disagrees with the second court?

A. We have a special appeal.

Q. This is in addition to the ordinary right of appeal under the Civil Procedure Code?

A. Yes.

Q. Does it come to this? If the first court in the district reverses the trial Judge, then there is a second appeal to the High Court both on fact and law.

A. Yes.

Q. So that in this province, really you have more liberal rules for second appeals?

A. I rather think that there is a similar provision in one, if not more provinces in India.

Q. Does that provision work all right?

A. Yes, I think it does. And I think it is desirable to retain it.

Q. You think it is a good provision?

A. I think it is.

Q. It is good if you get Judges to do it. Does it take a good deal of time?

A. I do not think it takes a good deal of time.

Q. Do you find any difficulty as regards any *ex parte* injunction granted by the lower Courts?

A. No. I think there was a tendency some years ago to do that, but one or two reported rulings, I think, of the Chief Court, induced the Subordinate Judges to be more careful.

Q. As regards stay of execution do you find that whenever there is an appeal on facts there is stay in execution?

A. I think there is an application for stay.

Q. What happens? Take an ordinary case of a money decree for ten thousand rupees. The first appeal is to the High Court but the defendant having lost applies for stay of execution to the High Court. What does the High Court do?

A. The High Court follows the Code. It requires security and also every provision of the Order to be complied with.

Q. As regards section 115, revisional jurisdiction, what is the view in this Court? Do you enforce revision in interlocutory matters?

A. It is hardly settled.

Q. Different views are taken up by different High Courts?

A. Yes.

Q. Is such interference frequent in this province?

A. Very infrequent.

Q. Are there applications for interference in revision in interlocutory orders?

A. Very infrequently. I do not suppose in ten years there are a hundred applications.

Q. Do you find any difficulty in the lower courts because of cases being hung up by reason of the High Court sending for records?

A. There has been in my personal experience several cases.

Q. What class of cases are they?

A. Where the High Court is trying an appeal in connected cases it sends for records.

Q. Have you ever known people applying for records to be sent up to the High Court really with the object of hanging up cases?

A. I suspected it was once.

Q. Do you know that there is any rule about sending for records, that records should not be sent up in special cases?

A. I do not know.

Q. Do you get many appeals arising out of execution orders?

A. Yes, a certain number, but I do not think they are much.

Q. You do not think that right is abused?

A. No.

Q. In your High Court is it the practice at the end of the hearing of a case for a Judge to give judgment straightaway or does he take it home and write the judgment there?

A. In some cases the judgment is delivered three months after but it varies with the different Judges. Recently we find a Judge delivered judgment in many cases at once.

Q. You do not think that something could be done by insisting on the importance of having a reasonable staff of shorthand writers so that where a Judge wants he can dictate his judgment?

A. That point I forgot to mention before. At the present moment the administrative side of the High Court is starved. There are not enough shorthand writers. It would be an economy of public time and public money if each Judge and each Registrar had a shorthand writer. In other provinces even the District Judges are allowed shorthand writers. Here, I believe, I am speaking subject to correction, there are three shorthand writers in the High Court and there are eight Judges. The administrative side of the staff is starved. In the High Court we have to wait for three or four weeks for a copy of a short judgment and when we get a copy of the judgment we have to wait still further for weeks for the decrees. When an appeal is to be filed you will understand that it is exceedingly dangerous if the decree is not forthcoming at the same time as the judgment. We cannot file an appeal without the decree and I know the decree cannot be got for over a month after the judgment has been delivered.

Mr. Justice Stuart.—*Q*. Is that in the High Court only or in the districts also?

A. It is exactly the same in the District Courts also. Perhaps the High Court is worse than the District Courts.

Q. When do you expect an urgent copy in a District Court?

A. I would probably get it in a week.

Q. You would not expect the next day.

A. Very rarely.

Q. And ordinary copies?

A. In three weeks.

Chairman.—Well, about the shorthand writers I may say that about a year or more than a year ago there was appointed a Retrenchment Committee for the Calcutta High Court over which the present Home Member presided and the first thing the Retrenchment Committee did was to recommend the appointment of several more shorthand writers as a matter of retrenchment and you say that there are only three shorthand writers here?

A. I think I am right—for taking down the judgment. Besides judgments, there must be a good deal of administrative work for the Chief

Justice and the Registrar and probably the Registrar requires one shorthand writer.

Sir T. Desikachari.—*Q.* I would like to ask you some questions with regard to the jurisdiction of Small Cause Courts at Rangoon. Do you think their jurisdiction can be enhanced to Rs. 3,000?

A. No. I do not think.

Q. Why not?

A. I think the issues involved in cases over two thousand rupees are very often much more important than the actual money. I think it is desirable that Small Cause Courts should be confined only to contracts up to Rs. 2,000.

Q. The limit of two thousand rupees must have been fixed many years ago?

A. Yes, that is quite so, but it represents 130 pounds. I think County Courts in England do not exercise jurisdiction above that. In England County Judges have more experience than Small Cause Court Judges in Presidency towns.

Q. Will you please just look at section 14 of the Burma Small Cause Court Act? Do you think any kinds of suits can be made to be brought within the jurisdiction of the Small Cause Court?

A. I think this act has been amended. There has been a slight amendment on this very point. I think one can get distress warrants in a Small Cause Court.

Q. What kinds of suits do you think can be brought under the jurisdiction of Small Cause Courts?

A. I do not see why immovable property should be excluded from the Small Cause Courts. I think suits for the specific performance, for obtaining injunctions, for the cancellation or rectification of instruments should be excluded. Suits for a general average loss and on policies of insurance on sea-going vessels, for compensation in respect of collisions, for compensation for the infringement of a patent, copyright or trademark should also be excluded, but I do not see any objection to extending the jurisdiction of Small Cause Courts to land cases where the pecuniary limit is two thousand.

Q. I find that your Small Cause Courts dispose of suits fairly expeditiously? Is that so?

A. Yes, that is so.

Q. What about other classes of suits, for instance, malicious prosecutions?

A. I do not like that such cases should be brought under the jurisdiction of Small Cause Courts. The atmosphere of Small Cause Courts should not be spoiled by suits relating to adultery, abduction, etc.

Q. Will you kindly turn to section 24 of the Act? Do you think that an appeal lies to the High Court from every decree when the amount exceeds one thousand rupees?

A. Yes, appeals lie to the High Court.

Q. Do they always go to the Chief Justice or before a Bench of Small Cause Court Judges?

A. We have no such system here as exists in Calcutta and Madras.

Q. Have you got a large number of appeals from Small Cause Courts?

A. Nearly every contested case over Rs. 1,000 is appealed.

Q. Would it not be better to have benches of Small Cause Court Judges to dispose of such appeals?

A. I do not think the system would work satisfactorily. I do not think you will find that benches formed of Judges of the Small Cause Court will be satisfactory.

Q. In Madras it seems to be fairly satisfactory. I do not think there is any complaint at all.

A. The legal talent in Madras is probably superior.

Q. Let me take the next point with regard to the training of township Judges, do you know what sort of training they receive?

A. I do not know.

Q. Do you not appear in mofussil Courts?

A. I do appear in mofussil Courts but not in Township Courts or Sub-Divisional Courts. As a matter of fact most of my practice is criminal.

Q. Have you ever appeared before District Judges?

A. Frequently.

Q. Are they generally Civilian Judges?

A. Do you mean to say Indian Civil Service people?

Q. Yes.

A. I think majority of them are not.

Q. From the 18th December I see there has been a change?

A. Yes, the majority of them are not civilian judges. The majority are Burmese Barristers or Burmese promoted from provincial service.

Q. Are they generally people who have a fair amount of legal training?

A. I think they need more training.

Q: With regard to the question of speeding up work, I think it is necessary to have efficient Judges instead of having a large number of them? From the point of view of efficiency, do you think that the subordinate judiciary can be recruited from a more efficient class?

A. I do not think, with the material of the country as it is, it is possible to get more efficient people.

Q. So you will have to get on as it is for some time to come?

A. I am inclined to think so.

Q. Are any people selected from the Bar?

A. Yes, a certain number is selected from the Bar.

Q. After how many years' practice are they selected?

A. I believe the minimum is five years, but I am not quite sure with regard to that.

Q. Have many members of the Bar been selected and appointed in that manner?

A. Several.

Q. But you have no experience as to how they have been doing that work? I am putting you the question with reference to the enhancement of jurisdiction of townships.

A. My experience is somewhat small and it is confined entirely to what I have seen on paper. I have seen judgments which have been brought to me for advice. I have never appeared before these gentlemen and I do not think I am competent to express an opinion.

Q. With regard to process service establishment, I think there is always a bailiff to get work out of the process-servers—a bailiff and a deputy bailiff?

A. Yes.

Q. Those are the persons who have the superintendence of all the process service establishment. I am going to ask you having regard to the evidence we have heard in other provinces, are the process-servers fairly honest and whether they are free from corruption?

A. From what I have seen, I do not think they are honest.

Q. How would you have control over their work? Does anybody see whether they have served so much percentage of processes?

A. I imagine that is done by the bailiff. I am not in a position to say.

Q. Your impression is they are not free from corruption?

A. It is my experience that they are not free from corruption.

Q. How about the bailiff himself?

A. I do not know really anything about him.

Q. So that if a dishonest defendant wants to evade the service of process, he can very easily do it?

A. Very easily, and it is done very frequently.

Q. With the connivance of the process-server himself?

A. I believe so.

Q. What would you do to rectify this corruption?

A. I think you want a more stringent supervision by the officers of the Court.

Q. What is the pay of a process-server?

A. The pay is from Rs. 16 to 22.

Q. What do you think is the living wage here?

A. If they want to have the process served efficiently, they ought to get men on Rs. 30 a month, and they should be punished severely if they do not do their work all right.

Q. With regard to the bailiffs, do you think that they are fit enough to exercise this control and supervision which you are referring to?

A. I do not know who is the bailiff of the High Court. As I have said before, when I am talking of Courts, I mean High Courts, because I have very little practice outside.

Q. Who is the person that is to supervise?

A. I think from the Chief Justice downwards. There should be more careful supervision of the administrative departments as regards delays and corruption.

Q. As far as I can see from your rules, they have prescribed 600 processes for a process-server in the mofussil and 1,800 in the town for one year. That seems to be a fair amount of work?

A. But I do not think you can judge whether a man is corrupt or not from his work, whether he has done three on one day and only one on the next day.

Q. What do you think of *benami* transactions?

A. We do not have many *benami* transactions in this province. I came across one or two at the most.

Q. I was reading the memorandum of a District Judge and he thought it necessary to have some ruling preventing *benami* transactions?

A. I do not think it is in the least necessary.

Q. Do you think any rule or law or custom requires codification in this province?

A. I do not think codification will be a useful thing at all.

Q. How about the partition of immovable property? If it is Mitakshara, no document is necessary. Would you be in favour of saying that a property worth Rs. 200, 300, or 500 should be evidenced by a document?

A. I should certainly introduce a provision similar to that you have in partition.

Q. Do you know that a lot of evidence is produced in suits for partition of Hindu families?

A. I never had a case of the partition of a Hindu family in this province.

Q. You do not think there is any necessity to have any rule, or procedure or substantive law codified here?

A. No. I am not in favour of codification. I do not think it helps.

Dr. DeSouza.—*Q*. With regard to second appeals, the Burma Courts Act gives more liberal rights, namely, when the first appellate court reverses the decree of a trial Court, then there is always a right of second appeal to the High Court, unless the subject-matter of the suit is less than Rs. 500 in the case of a Small Cause Court nature. Now, with regard to these more liberal rights of second appeal given by the Burma Courts Act, you say it is a salutary right and you would like to have it. Would you not bring it in conformity with the rule prevailing in other provinces?

A. No.

Q. Do you find that in consequence of this practice, there is a tendency to confirm the decree of the trial Court in order to avoid a second appeal?

A. I do not think that there is that tendency.

Q. You have not heard any complaints?

A. I do not think that the Judges—who are men of discretion and some standing—would be moved by such motives as that.

Q. At any rate you have not heard of any complaint against them?

A. No, I have not.

Q. You said that there was difficulty in getting copies in the district Court as well as in the High Court and average time taken up is three to four weeks.

A. I do not think I said the average. Sometimes it happens that we have to wait for short judgments for three weeks.

Q. And in the District Court?

A. We get them quicker.

Q. Is there any maximum period fixed before the expiry of which the District Court should supply copies?

A. My experience is very small in the district courts. I get these judgments to take up appeals in the High Court.

Mr. Justice Stuart.—*Q*. You think that the copying department should be overhauled completely?

A. Yes.

Q. I notice that not much use is made of Order 41, Rule 11, in second appeals.

A. That is so.

Q. The Court does not dismiss a very large number under that Order?

A. In this province there are not a very large number of appeals filed.

Q. Then the right of appeal is not abused?

A. No.

Q. From the figures I find (I just want to bring that point out) that they are very well forward with their second appeals. I find there were 1,572 appeals before the High Court and at the end of the year there were only 507, representing only four months work. I find that figure good in comparison with figures in other provinces.

A. Yes. Before I forget there is a matter to which I wish to refer. I say the copying department and making out of decrees require overhauling. I also think that interpreter's work not only in the High Court but also in the other Courts is bad. I am told by my Indian friends that interpreting is bad and what I have observed is this that a good interpreter when he reaches a certain stage is promoted to some other appointment. We have, for instance, a gentleman who was an excellent Tamil interpreter and he is now an Assistant Registrar. We lose his service as an interpreter because his pay is not commensurate. I do not think that these interpreters have got sufficiently good prospects in this province.

Q. The question is peculiarly difficult in Rangoon?

A. Yes, there are so many languages—Chinese, Tamil, Telugu, Hindustani and dialects.

Mr. Dunkley.—*Q*. You said that delays on the Original Side of the High Court are not so serious as those in the mofussil Courts.

A. I said that suits on the Original Side were not subject to as much delay as the suits in the mofussil. I was speaking of commercial suits.

Q. I suppose you have not any definite figures.

A. I have not got the figures. I am giving my experience.

Q. Is it not a fact that on the Original Side of the High Court there is always a very large number of cases ready for hearing and the delay probably occurs because there is no Judge to take them up?

A. Yes, that is so. There is always a large number of cases ready for trial.

Q. Do you not think that as far as the Original Side is concerned the delay is really due to the fact that only two Judges can be spared and that if another Judge could be spared the duration of suits would probably be reduced by half? There is a special list of cases which are ripe for hearing. There is a daily list and then there is a weekly list and that contains cases which can come on.

A. No. Many cases which cannot come on appear in the weekly list.

Q. Still you agree that the average duration of cases outside Rangoon is very much less than in the Courts in Rangoon?

A. I think probably that is so.

Q. Then you said that there is a great waste of time in Courts outside Rangoon as regards settlement of issues?

A. Yes.

Q. Is it not a fact that the practice is for issues to be settled on the day on which the written statement is filed?

A. No, my experience is that another date is fixed for settling the issues.

Q. Then with regard to the question of Civil Courts fixing too many cases on one day. Is it not a fact that they fix more cases than they can cope with, if all the cases come on, because it is highly probable that at least some of the cases fixed will not be ready for trial and will have to be adjourned?

A. I think they fix more cases than they can cope with only for the reason that if a case is not taken up (*i.e.*, witnesses in that case do not turn up or something else happens) they can take up another case.

Q. Then with regard to the question of hearing cases from day to day. Here again you know most of the Sub-Divisional Judges have to try criminal cases?

A. That is so. I had forgotten to mention this fact.

Q. If a Judge is trying a case to-day and wants to take it up to-morrow also, there may be an accused under the custody of the police coming up for trial before him. Do you not think it is impossible for him to go on hearing civil cases from day to day?

A. Yes, that is quite so. The same is the case with District and Sessions Judges. They have also to do criminal work and cannot take up a case from day to day. May I point out that I had a long case before a District Judge and he had fixed a date for that case. But on that day a criminal case came up for hearing and my case was postponed for two or three months, that is to say, a very long adjournment was given.

Q. Do you not think that if a Judge takes up a case from day to day his work will be blocked?

A. Of course.

Q. Then with regard to the question of Letters Patent appeals you told Mr. Justice Rankin that a certificate of the Judge trying the case has to be obtained?

A. It was Mr. Justice Rankin who told me that. I confess that I have not read the Letters Patent very carefully.

Q. Under the rules there is no necessity for such a certificate in appeals from decisions of the Original Side Judges of the High Court. Do you consider it would be a good thing to alter the rules so that in cases of less than Rs. 10,000 in value there should be no appeal except on a certificate of the Judge trying the case?

A. I do not think first appeals under the Letters Patent should be subject to the leave of the Judge trying the case. I do not think such leave is required in England.

Q. I think you will agree with me that District Courts ought to have shorthand writers?

A. Yes.

Q. I think shorthand writers will save time?

A. Undoubtedly. There is one matter with regard to which Courts in India differ from Courts here, and the matter relates to the printing of records. In Calcutta and Madras, perhaps in all the provinces, records are printed, but we have nothing of that kind here. I think I am right in thinking that records of even District Courts and Munsif Courts are printed in those provinces.

Mr. Justice Stuart.—Judgments are printed.

A. But it is a very great point.

Mr. Dunkley.—*Q*. Do you think that the employment of shorthand writers will have the effect of speeding up work particularly in the High Court and the District and Sessions Courts, where the Judges have a lot of miscellaneous work to do?

A. Yes.

Q. With regard to the question of copies, I suppose you know that the system in the High Court is quite different from the system followed in other Courts? In other Courts copyists are paid by a share of the copying fees, and get no other remuneration. In the High Court, they are paid a fixed salary.

A. Yes.

Q. Have you ever known of a case in which there was serious delay in obtaining copies in District Courts? My experience is that outside the High Court there is never any delay, although I am not quite sure about Rangoon itself.

A. There is delay in obtaining copies of judgment and decree for filing an appeal. I think it takes about two or three weeks.

Mr. Justice Stuart.—*Q*. What amount of copying fee does the copyist get?

Mr. Dunkley.—He gets two-thirds and the Government gets one-third.

Q. Who gives the paper?

Mr. Dunkley.—It is Government paper that is utilized. Then you say something about the present judicial system. Do you think that the old system of having Divisional Judges was better? He was in charge of several districts, most probably three or four districts, and could exercise a closer supervision over the work of District Judges than the High Court can do.

A. Yes. I think the old system was better.

Q. You said that the question of codification of the Burmese Buddhist Law would not serve any useful purpose. Don't you agree that it is out of the question because it is still in an unsettled state on many points?

A. I agree.

Mr. Chari.—*Q*. Though it may not be possible to codify the whole of the Buddhist Law, have you any experience of adoption under the Buddhist Law? Twenty-five witnesses would come forward and say that X adopted Y.

Don't you think it will be better if you have a rule that no adoption will be recognised unless accompanied by a registered document?

A. That does not mean codification of the law.

Q. Suppose the Burman Buddhists have no objection?

A. I have no objection.

Q. As regards commercial cases, you say, it takes 5 to 8 months to dispose them of?

A. That is a very rough estimate.

Q. Is it from the time the plaint is filed?

A. From the time the defendant makes his appearance.

Q. Don't you think the period is too long?

A. Well, I do know that the commercial community wanted to speed it up.

Q. You know there is a tremendously long pending list in the High Court. So far as that Court is concerned, it is all right.

A. I think if you go through these cases, the number of them are not so large.

Q. But many of them are not all cases which are in the least ripe for hearing?

A. But the great majority of them are ripe for hearing.

Q. As regards execution matters, have you had experience of a man having a thousand rupees worth decree and getting hold of broken chairs, etc.?

A. Yes.

Q. Don't you think it seriously delays the work of the Court?

A. If at all he can attach broken chairs.

Q. If it is within the provisions of Limitation Act, then the execution ought to be revived after every three years, and it will give him time within which to execute.

A. Under the rule he has got that privilege.

Q. Why not we do away with that renewal and give him a fixed time within which he should execute his decree. Don't you think it would save a good deal of the Court's time?

A. Yes. I see no objection to that.

Q. You will do away with that sort of execution?

A. Yes.

Q. Do you know that in the Small Cause Court Act, it gives unlimited jurisdiction?

A. As far as I know it has never been used.

Mr. J. HORMASJI, I.S.O., Barrister-at-Law, Taxing Master and Official Reference of the Rangoon High Court.

Written Statement.

1. A. *(i) High Courts.*

Original Suits.

(*a*) Commercial—uncontested, 4 to 6 weeks; contested, 4 to 6 months.

(*b*) Others—uncontested, 4 to 8 weeks; contested, 2 to 8 months.

2. Yes. The main causes of the delay are: apathy of the plaintiff and his legal adviser, various devices by the defendant to delay hearing, general

inclination on the part of members of the Bar to oblige each other in the matter of postponements, and their inability to give adequate time and attention to the preparation of cases.

3. (*i*) If the Court considers that summons to defendant has been returned unserved more than twice through want of due diligence on the part of plaintiff it should have power to dismiss suit against defendant not served. No appeal should be allowed.

(*ii*) Not more than one adjournment and that only on good cause shown should be given for filing written statement.

(*iii*) Adjournments on the ground of counsel being engaged elsewhere should be systematically refused.

(*iv*) Responsibility of advocates to clients for conduct of cases in which they are engaged should be enforced.

(*v*) Delays incidental to interlocutory proceedings should be reduced by setting down cases in which written statement has been filed for directions and making it obligatory on parties to obtain all such necessary directions as would be given at the hearing of a summons for directions.

Returns of commissions to examine witness issued to other Courts within the time fixed should be strictly enforced.

(*vi*) Introduction of Third Party Procedure. Members of the Indian Civil Service should elect from the beginning to be in the judicial branch and should spend a year of their period of training in reading in the chambers of a practising Barrister or in working in the capacity of an articled clerk to a solicitor. They should ordinarily serve for 2 years as Sub-Divisional Judges before they can expect to become Divisional Junior Judge. Township Judges should increasingly be recruited from those who have either practised at the Bar as 1st or 2nd grade pleaders or have worked in the office of a practising advocate or pleader of the 1st grade as an assistant or articled clerk for a period of not less two years. A judiciary recruited from men who have had no experience in the practice of the law is apt to be weak and a weak or poorly equipped Judge is generally the cause of much of the delay that occurs in the disposal of cases in his Court.

7. A Judge should be expected to sit in Court and hear cases as a rule from 11 A.M. to 5 P.M. with half an hour's interval for lunch. He should so arrange the work of his Court as to provide sufficient work for a full day's sitting. The High Court Original Side system of bringing up cases for hearing in turn from a peremptory or warning list of cases ripe for hearing (except when special dates are fixed for special reasons) is in my opinion most conducive to that end. Further, delivery of judgment in cases where judgment is reserved should not except in cases of exceptional length or difficulty be delayed for more than 2 weeks. The diary of each case should show the time from day to day for which the Judge is occupied in hearing it. Besides that the Judge's personal diary should show the number of hours for which he sat in Court. When this number is less than 5, he should enter a brief note stating the reason and how the balance of time was occupied. Inspecting officers should inspect this diary and check it with the diaries of some cases. A record should be kept in a register of the average number of cases disposed of in a month by every judge during his tenure of office. A fair average of monthly disposals could in this way be obtained and that should be regarded as the standard of efficiency for a judicial officer.

8. Yes.

9. No.

15. Section 14 of the Rangoon Small Cause Court Act, 1920, applies in place of Schedule II of the Provincial Small Cause Court.

Suits for declaratory decrees in regard to attached movable property of the value of Rs. 2,000 and less under Order 21, Rule 63, should lie in the

Small Cause Court; also suits in relation to the specific performance or recision of contract in respect of movable property of the value of Rs. 2,000 and under. Suits to enforce simple mortgages by sale of the mortgage property should in my opinion continue to be dealt with in the High Court, as the uncontested suits of this nature are capable of being dealt with as speedily in the High Court as in the Small Cause Court. The procedure relating to sales of immovable property is foreign to a court of summary jurisdiction. There is no objection to suits relating to partnership with small capital (where no immovable property is involved), being dealt with by the Small Cause Court, except that where there is an issue as to whether a party was or was not a partner a summary hearing and decision would not generally prove suitable. Such cases in the High Court are very few and the cost of litigation in the High Court is as a rule not necessarily high.

16. (*a*) Summary procedure could not I think be introduced in the lower Courts with good results. The procedure is not much used in the High Court—not favoured by the Bar. It does not necessarily tend to speedier disposal of cases.

17. There is no difference in the cost of instituting a case whether it is contested or not. Uncontested cases apart from delays arising out of the service of summons and procuring of evidence on commission would not be more speedily disposed of by the Sub-Registrar than they are by the Courts.

19. (*a*) Judgments in interlocutory matters and in matters arising in the execution of decrees and judgments merely deciding a preliminary point of law or procedure ought not to be appealable except with the leave of the Judge to be given where it is shown that the party desiring to appeal will be materially prejudiced in the event of no appeal being allowed.

(*b*) I consider the suggestion a sound one.

20. About 15 per cent. of the second appeals to the High Court are summarily dismissed. Second appeals should be allowed in land suits irrespective of value.

21. Discretion to compel the deposit in a proper case might with advantage be given.

23. Yes. I would accept the suggestions (1) and (2). Subject as to (1) to the Court being given a discretion to dispense with the deposit in special cases.

24. In my opinion it is not the procedure at the trial that is at fault. Judges, advocates, pleaders, parties and witnesses being in the majority of cases what they are, the present state of things will continue. I would refer in this connection to my answers to Questions 3 (*iv*) and (*v*), 7 and 37. In Small Cause Suits (except where an appeal is allowed), summary procedure must be rigorously enforced, no written statement should be allowed and hearing must take place on the date fixed for final disposal or on the following day or days and must be continued from day to day if necessary.

25. The remedy lies in keeping a strict watch on the process-server's work. If his affidavit shows satisfactorily that more than one or two attempts to effect personal service have proved abortive owing to his not finding the defendant and that defendant was actually living at the time in the house where he has been searched for and that in consequence of the defendant not being found personally the summons was posted on the outer door of the house, the summons should be held duly served. The procedure for service of notice under section 106 of the Transfer of Property Act would in my opinion prove suitable and should be applied to the service of summonses and notices under the Civil Procedure Code.

26. I do not think there is a material difference. The answer to the second part of the question is in the affirmative.

27. They are not neglected in the High Court and I have no reason to think that they are much neglected in other Courts in Burma.

28. The answer to the first part of the question is in the affirmative. The Court ought to have a general discretion to send a summons or notice by post even when the addressee resides in British India. The Patel or Headman of the village can I think be used for serving summonses and notices. He should be provided with forms of affidavits to be sent with the returns and should make the affidavits before the nearest Civil Judge, Magistrate or Sub-Registrar. He should receive a bonus at the end of the year based on the number of persons served with process of which he should keep a register.

29. Yes. Such a rule would be very useful.

30. The suggestion is a good one. The process-servers of the High Court act in accordance with this suggestion.

31. None. An experienced judge is required to ensure the proper framing of issues.

32. So far as the High Court, Original Side, is concerned the provisions as to discovery by interrogatories and as to admission of facts and documents are not made much use of. The Bar do not, I believe, think much good results from making use of these provisions generally, and it seems to me that in most cases they do not give attention to the preparation of their client's cases until the case is about to reach hearing, when it is too late to think of making use of the said provisions. The provisions as to costs in Rules 2 and 4 of Order XII, are in practice entirely ignored. I am unable to suggest a remedy.

33. The answer to both parts of the question is in the negative.

34. Even in the High Court, Original Side, the provision is not strictly enforced. The Court should ordinarily refuse to issue a fresh summons for a witness who had once been summoned and served for a particular date.

35. So far as the Original Side of the High Court is concerned, the answer to the first part of the question is in the negative, although it does happen at times that much unnecessary and avoidable oral evidence is let in because the counsel is not sufficiently prepared or is merely holding another's brief. As to the 2nd and 3rd parts of the question I would suggest, though not without some hesitation, that the Court might be given a discretion to limit the number of witnesses to be called to prove the same fact or set of facts. An experienced Judge does in practice exercise some moderating influence of this sort by making a suggestion which is accepted by the pleader concerned that further witnesses might be unnecessary.

36. I agree with the suggestion, the adoption of which will result in the saving of the time of the Court to some extent.

37. I do think that Judges of the High Court and District Courts and Judges of Subordinate Courts recommended by the High Court should have a discretion to record a note at any point of the examination or cross-examination of a witness that the examination or cross-examination must be ended within a stated length of time. At present it is impossible to stop much desultory questioning that goes on although the presiding Judge has clearly come to the conclusion that a witness's examination or cross-examination is being spun out either because the advocate or pleader is not at the time sufficiently instructed or prepared or because he wants to impress his client with the number of questions put to the witness. Knowledge of the fact that the Judge has the discretion will in itself go a long way to put a stop to such desultory and aimless questioning of witnesses.

38. The provisions of Order 37, Civil Procedure Code, might with advantage be extended to suits on a registered mortgage, to suits for money due on a pronote, and collaterally secured by the deposit of title deeds of immovable property and also to suits for the price of goods sold and delivered. These provisions are however not popular with the Bar. Costs allowable under the decree should be the ordinary costs, on the uncontested scale.

39. The answer to the first part of the question is in the negative.

40. The answer to the first part is in the affirmative.

If the legal representative does not come forward within say 3 weeks and request to be added as a party, the opposite party may apply for a notice addressed to the legal representatives of the deceased (generally) calling on them to show cause why the claim or statement of defence should not be struck-off with costs and a decree entered against the estate or the legal representatives of the deceased. This notice should be served by posting a copy thereof on the Court notice board and on the outer door of the house in which the deceased resided at the time of his death and on such service being effected the Court shall presume that the legal representatives were aware of the proceedings. A similar notice could be taken out and served by the decree-holder against the legal representatives of his deceased judgment-debtor and on that being done execution could be granted against the property of the deceased.

41. The answer to the first part is in the affirmative. The remedy lies in requiring the plaintiff to obtain the consent in writing of one or more possible guardians and to verify that consent by affidavit to be filed with the application for the appointment of a guardian *ad litem*. If such consent could not be obtained he should state the fact in his affidavit and ask for the appointment of an officer of the Court or such other person as the Court thinks fit as guardian *ad litem*. Service on the minor is a farce and should be done away with. If the proposed guardian who has consented to act is not the natural guardian or the person having the custody of the minor, notice to him or her alone need issue before making the order of appointment (*vide* Rules of Practice of the Madras and Calcutta High Courts, Original Side).

42. The practice of granting *ex parte* injunctions and orders of attachment or arrest before judgment is occasionally taken undue advantage of even in the High Court and therefore presumably in the lower Courts. It might be checked to some extent by awarding penal costs or exemplary compensation to the injured party.

44. I do not think this is usually done.

45. Not in the High Court. It has not led to delay in disposal.

46. They are not usually consulted in the High Court, Original Side, where cases are brought up for hearing in turn. It has not led to any delay in disposal. No rule is wanted; consultation would not do much good as a rule. Advocates and pleaders consult among themselves so that those engaged in the next case might know when it is likely to begin.

47. The trial of cases in which commissions for the examination of witnesses are issued are as a rule unduly delayed by reason of the examination of witnesses on commission. It does not seem necessary to control the length of such examination. The delay arises from parties not appearing before the commissioner or from adjournments being asked and allowed by him. I would not add to the powers of commissioners. I would insist on written interrogatories except by leave of the Court and where such leave is given, no extension of time for return of commission or reissue of commission ought to be granted, even on good cause shown unless the party applying, if a defendant, deposits the amount claimed in Court and complies with such terms as to costs or otherwise as the Court may think fit to impose. If the plaintiff applies for reissue or for extension of time for return of commission the application should only be granted, if at all, subject to his paying the defendants Rs. 150 or his actual cost of the commission whichever is greater, or if the case is not contested subject to his forfeiting the whole or a part of his cost of the suit.

48. The answer to both parts of the question is in the negative. I understand that there is reason to suspect that in the Subordinate Courts applications for adjournments are encouraged rather than checked by day costs for adjournments. In the High Court it is not usual for an advocate either to oppose an application for an adjournment or to ask for the costs of an adjournment to which he does not consent.

49. I have reason to believe that in most cases suits are not tried continuously day by day in the mofussil courts or even in the Rangoon Small Cause Court, the reason being that other cases or work is expected to engage the Judge's time on days intervening between the dates of the first and the adjourned hearings. If a rule is made that the hearing of a suit once begun must be continued from day to day except when an adjournment becomes absolutely necessary from an unforeseen cause, *e.g.*, the sudden and serious illness (to be strictly proved) of a party or his witness or pleader, I do not think it will be difficult to enforce it. But such a rule could only work where contested suits are not usually fixed for specific dates but are taken up for hearing in turn from a peremptory list of cases ripe for hearing. There is not much substance, in my opinion, in the usual arguments that unless dates are fixed great confusion and inconvenience to witnesses, parties, etc., must result. It is the Bar more than the public who would oppose the High Court system of hearing cases to a finish from day to day.

50. Yes, but the inspection can only be more or less superficial and does not result in much good beyond the correction of errors in the keeping of registers, etc.

51. I doubt if a system of giving special expedition to commercial suits in the Subordinate Courts of the province would prove to be of any appreciable value. Even in the Rangoon High Court the Bar is not keen to take advantage of any special provisions intended to give expedition to commercial suits. It might, however, be provided that on a plaintiff's satisfying the Court that a case falls within the definition of a commercial cause or suit and applying for the hearing to be expedited, the Court shall expedite the hearing so as to ensure that the disposal of the suit is not ordinarily delayed for a longer period than 6 to 8 weeks after the service of the summons.

52. Garnishee procedure ought to be introduced in the Courts generally.

53. I would agree to the extension of the principle of section 21, Civil Procedure Code, to proceedings in execution generally.

54. I think the investing of Courts to which a decree is transferred for execution with the powers mentioned would be an improvement on the present procedure.

55. The modification suggested would result in making justice speedier and more economical generally and would incidentally benefit the persons interested in obtaining a fair price for the property.

56 (*a*) I am not in favour of curtailing the period given in section 48, Civil Procedure Code, for execution of money decrees or of altering article 182 of the Limitation Act by substituting 1 year for 3 years therein or of altering the starting point from the date of the last application to the date of the last order on the last application. As to whether it is necessary for the decree-holder to apply every three years or one year, I do not think the change suggested is necessary or will result in any improvement on the present state of things.

57. The alteration suggested in this question will, I think, result in checking *benami* purchases at Court sales and is calculated to diminish litigation.

58. I approve of the alteration suggested to Rules 1 and 2 of Order 21. It will prevent the Court's time being wasted in inquiries as to whether or not an alleged payment out of court was in fact made.

59. Notice to the transferrer would appear to be scarcely necessary after the filing of an affidavit by him as to the fact of the transfer. Notice to the judgment-debtor should I think nevertheless issue under the first proviso to Rule 16 of Order XXI.

I think there can be no objection to the second proviso to the rule being modified. Its modification should enable, *e.g.*, a surety who was sued as co-defendant or the maker of a *pronote* who was a co-defendant with an endorsee to recover against the defendant who was the real debtor without filing a separate suit.

60. I think the discretion given to the Court is useful and should not be taken away.

61 (*a*). I think the notice is necessary, *e.g.*, to prevent a judgment-debtor being taken by surprise in execution. Clause (2) gives the Court discretion to dispense with the notice on special cause being shown. Notice of the execution petition itself is in most cases unnecessary. It may be provided that notice under Order 21, Rule 22, shall not be necessary where the Court orders notice to be given to the judgment-debtor of the execution petition in which substantial relief is asked for.

(*b*) The deletion of Order 21, Rule 22, is in my opinion not called for and is likely to result in abuse of the process of the Court.

62. The suggested provision with regard to money decrees might work hardship; clause (3) of the rule gives the Court a discretion to require security or impose conditions. It might be modified by giving the Court discretion to require the amount of the decree and costs to be deposited.

63. There is no necessity for special notices in the different stages of execution of money decrees sought to be executed by the sale of immovable property. According to our practice (apart from notice under Order 21, Rule 22) the only notice issued is the notice for settling sale proclamation.

64. I am not in favour of the rule suggested in the first part of the question. The furnishing of particulars for and the drafting of a sale proclamation takes some time. Issue of the writ of attachment ought not to be delayed pending the preparation of the sale proclamation.

64. The answer to the last two parts of the question is in the affirmative. It should be open, however, to the vakil who is served with notice after the lapse of some time, say a year, from the date of the decree to appear and ask for time to communicate with his client. If these rules are made, vakils may be expected to protect themselves by taking and keeping a note of the address for service on the client and including in their fees a small sum for the cost of forwarding notices of execution petitions.

65. No.

66. I would not suggest any alteration in the present procedure in the direction indicated. There is in my opinion no reason why a purchaser at a sale in execution of mortgage decree should be put in a more favoured position than a purchaser at a Court sale other than a sale in execution of a mortgage decree.

I am against the suggestions (*a*)—(*d*). There is, as far as I am aware, no encumbrance certificate available in the registration offices here.

(*e*) The time granted is 6 months from date of preliminary decree. In my opinion the period of 6 months should count from the date of suit.

The old system of having only one decree was quite satisfactory. There is no need for a final decree in any mortgage suit where no account is directed to be taken. It is not necessary to have a separate personal decree.

67. Occasionally delay of this sort is caused by orders staying execution made by the appellate Courts. I cannot say that such stay orders are frequent. My opinion is that stay should ordinarily be granted only on the condition that the decretal amount is deposited in Court. The appellate Court should be invested with the power to grant exemplary compensation as suggested. The compensation should take the form of interest at a rate up to 18 per cent. per annum on the amount of the decree and costs for the period between the date of the stay order and its revocation.

68. The answer is in the affirmative.

69. The answer to the first part is in the affirmative.

It hampers by placing the power of realization of the insolvent-debtor's property in the hands of the Official Assignee or Receiver appointed by the Court. There is considerable avoidable delay in both the respects mentioned.

I do not think devolution would mend matters.

70. The answer to the first part is in the affirmative. To prevent delay in the realisation of decrees due to the absconding of judgment-debtors, Courts should be empowered in a proper case to issue the warrant of arrest addressed to the head of the Criminal Investigation Department of the province and the warrant should be capable of transfer by endorsement from province to province; decree-holders would gladly meet the necessary costs. The provision for arrest or attachment before judgment in the present case does operate effectively to prevent such delay in the cases in which they are applicable.

71. Unrestricted right of parties to examine and cross-examine witnesses as to all relevant facts is, in my opinion, the main cause of the unduly protracted trials.

72. The answer to the first part of the question is in the negative and to the second part in the affirmative.

73. Answer to the first part is in the affirmative. This Court even now does not insist on certified copies where secondary evidence is tendered by consent.

74. The period of limitation prescribed by Articles 156 and 173 of the Limitation Act should not be more than 60 days and that by Article 174 not more than 30 days.

The period prescribed by Articles 176 and 177 should be reduced to 60 days.

75. Perjury is far too common, and is committed with impunity by persons of wealth and position as well as by persons in humbler walks of life. This makes it difficult to elicit the truth from oral testimony and leads moreover to a far larger volume of evidence being tendered than would otherwise be possible or necessary. District Courts and High Courts should have power to summarily try offenders and subordinate Courts to refer cases of perjury to District Courts for summary trial.

76. Yes.

77. Partnerships started with a capital of Rs. 500 and more should be evidenced by a registered document. I am in favour of the compulsory registration of all contractual partnerships.

78. I agree.

79. I agree. Hardships might arise until the change in the law becomes generally known, but the change will I think certainly be a move in the right direction and operate towards reducing the duration of cases.

80. I accept the general proposition subject to the restriction that the rule should apply only where the law requires a transaction to be evidenced by a document.

81. Apart from any question of fraud or undue influence, I think it ought not to be open to a party to a document or a transaction to say that the document executed by him is a sham and was never intended to be acted upon; or that the apparent owner of the property in whose name the title deeds stand is not the real owner.

The answer to the second part of the question is in the affirmative.

82. I do not think frivolous suits can be put down by enhancing court-fees in suitable cases. Even if that were possible, I don't see how such "suitable cases" can be differentiated from others. It is not possible I think to make any practicable suggestions in this connection.

83. I would retain the existing provisions as to the attestation of mortgages, sale deed and leases.

84. Nothing short of making champerty and maintenance a criminal offence punishable with imprisonment up to three years will in my opinion serve as an effective preventive.

85. Cases for the taking of accounts generally, for making enquiries under Order 21, Rule 41, Civil Procedure Code, or under section 90 of the Probate and Administration Act or section 31 of the Guardians and Wards Act,

inquiries as to what would be proper to be allowed as maintenance or marriage expenses, as to whether the proposed terms of any agreement or compromise with reference to a suit would be for the benefit of a minor, inquiries as to the appointment or fitness of persons to act as next friends, guardians, trustees, receivers or managers of a lunatic's estate and such other inquiries or investigations might with advantage be referred to referees. Reference of account matters to private referees (members of the Bar) by the Original Side Judges of the late Chief Court of Lower Burma used as a rule to greatly delay the final disposal of cases. Hence an official referee is needed.

86. I don't think it can be said that the multiplication of law reports has interfered with *speedy* justice.

87. The answer to the first part of the question is in the affirmative. The Law of Torts might perhaps be codified at once; and if Budhists, Muhammadans and Hindus would respectively agree, the codification of their personal laws would greatly help to make justice speedy and economical.

Mr. J. HORMASJI, Official Referee and Taxing Master of the Rangoon High Court, called and examined on Wednesday, the 30th April 1924.

Chairman.—Q. You are a Barrister-at-Law and Taxing Master and Official Referee of the High Court?

A. Yes.

Q. Am I right in saying that your experience is with regard to the Original Side?

A. Yes. That is so.

Q. Now, in practice, in the High Court how long do you think a contested commercial suit takes at the present time?

A. Unless it is unduly delayed for some special reason it generally takes four to six months.

Q. Do you regard that fairly satisfactory?

A. Yes that is satisfactory, but the period can be much reduced if the Bar is keen on it. The court has already provided procedure to give expedition to commercial cases as far back as 1911 by making rules for summons for directions but not in a single case has the Bar taken advantage of it by applying for summons for direction.

Q. What different lists of suits are kept in the High Court?

A. The first list is for appearances. Suits filed are entered in the list for appearances. After summons has been served and the written statement has been filed, the case is transferred to one or other of these three lists:—(1) short contested causes, (2) ordinary long contested causes, (3) commercial contested causes.

Q. Then as regards uncontested causes how do you dispose of them?

A. After the summons is served and there is no contest the case is immediately taken up by one of the Deputy Registrars who passes a decree and submits it to the Judge.

Q. How is a case marked for the commercial list? Does the plaintiff mark it at the time of filing of the plaint?

A. After the written statement is filed the Deputy Registrar marks it as a commercial case, by looking at the nature of the case The definition of a commercial case is the same here as in Calcutta or in Bombay.

Q. Two judges are employed on the Original side and I understand one takes up commercial suits and the other takes up other suits?

A. One takes commercial suits and short contested cases because commercial suits alone do not provide sufficient work for one Judge and the other takes up long contested cases. Particular keenness is shown on commercial suits and they are at once brought up for hearing. I do not think commercial cases take more time in our province.

Q. There are appeals from the small cause court, I understand, heard in the High Court?

A. Yes, in suits over Rs. 1,000.

Q. As part of the original jurisdiction or as part of the appellate jurisdiction?

A. As part of the appellate jurisdiction.

Q. If any question arises over an application for revision, is it heard on the Appellate side or on the Original side?

A. Appellate side.

Q. I see you say that some time might be saved if the court had power to dismiss a suit when it considers that a summons to defendant has been returned unserved more than twice owing to want of diligence on the part of the plaintiff?

A. Our experience is that suits are unduly delayed owing to want of sufficient activity on the part of plaintiff to get the summons served; especially when our summons is sent to Madras, very little is done by the plaintiffs to help the summons being served, and the consequence is we keep on issuing fresh summons. There is no rule to dismiss a suit, but we have made some sort of provision that if a summons is returned unserved more than thrice, no cost should be allowed, but the judge is in a difficulty and he does not know what to do.

Q. When a summons has to be served in another province, what is it that the plaintiff ought to do as a rule?

A. Leaving aside cases where the man is thoroughly well known to the process serving staff, in Madras city or in Calcutta there would not be much difficulty in serving such summons. In villages the usual rule is that unless someone goes to identify, it is not easily served, although I acknowledge the courts in Madras do a great deal. The village headman or somebody takes some sort of interest in it and gives information about defendant and, as far as he can help, points out the defendant. The usual return is that the defendant has gone to a certain place, that he cannot be found or his address is not sufficient and if the plaintiff does nothing to keep a man there or in some other way to assist the process serving staff the chances are that summons issued to defendants in outlying places is more often returned unserved than served.

Q. In Bengal it would be returned for want of an identifier. In these cases the plaintiff should be made to supply an identifier.

A. The correct address should be given.

Q. If a suit is dismissed on that ground, would you allow that suit to be brought up again?

A. Yes. The man should be mulcted. The man loses his court-fee. That should be sufficient punishment. Although we issue summons for final disposal and we say that appearance should be entered at least on a certain fixed date, what they do is they come there on the date fixed for filing written statements and keep applying for time to file written statements and very often repeated extensions are taken for filing written statements.

Q. Why give the adjournments?

A. We aim at being very firm, and in case of contumacy and something like that, we lay the case before the judge.

Q. You suggest that delays in interlocutory proceedings should be reduced by setting down cases in which written statements have been filed for directions and making it obligatory on parties to obtain all the necessary directions as would be given at the hearing on a summons for directions?

A. Having found that the bar will scarcely look at the rules in connection with the summons for directions, I think the only course open to us is to add a proviso in the rules that as soon as a written statement is filed, every suit should be brought up for directions. I think it should be made a general rule everywhere.

Q. What do you think about the introduction of third party proceedings?

A. I think that would eventually reduce the duration of litigation. Now and again you find a case in which when A is sued, he says he is not liable, but B is liable. B does not appear and he remains in the background and the suit is fought out to the bitter end. If plaintiff loses, he has got to sue again the other man. There is no provision at present to add him as a party.

Q. That is not a third party proceeding. A third party proceeding is not one where there are alternate claims. We claim against A, then against B. Plaintiff gets them in the alternative.

A. You can. The plaintiff sues one party only and it is not open to the defendant to bring in the other party.

Q. Don't you think it would tend to lengthen the duration of the case?

A. It would tend to lengthen the duration of that particular case, but it should ordinarily suffice to finish two cases in one case. That is not a matter which arises commonly, but once in a way.

Q. In the Code, as at present, do you find that the proper use is made of Orders regarding discovery and admission of documents, notice to admit facts, etc.?

A. The general tendency is to apply for a document and have inspection. That is all, that they do. In special cases they apply for administering interrogatories.

Q. What is your candid opinion? Do you think the pleadings are reasonably well drafted according to the rules?

A. Pleadings drafted by experienced counsel here are what they ought to be, but a lot of young fresh blood is let loose here. As soon as they pass, they take to drafting pleadings and it is not right. The plaints are returned. On the whole it may be said in the High Court that the pleadings are sufficiently well drafted.

Q. Do you get applications to strike out certain particulars from the pleadings because they are vexatious or irrelevant?

A. Not very much, but it is not of infrequent occurrence.

Q. That is people do attack each other's pleadings?

A. They do.

Q. What chance does a person here get, when he begins practice, to learn how to draft the pleadings? He has passed the LL.B., what more has he done?

A. If he has passed the LL.B., perhaps he is far better than if he had merely been a barrister. He practically gets no training unless he goes and works under a senior.

Q. Is that done in Rangoon to any great extent?

A. It is very rare.

Q. Do pupils go to Chambers and take training?

A. It is rather rare.

Q. When pleadings are drawn, you find that somebody who has just got his law degree does it and the senior counsel who is really going to get through the case is brought in just at the time of hearing.

A. If a senior is brought in, he is brought in at the outset unless the junior is of a sufficient standing. If a junior is of sufficient standing the senior is brought in when it is found that the opposite side is strong.

Q. At the earlier stages, I take it, in good many cases the person in charge is a junior man.

A. Most of the work on the Original side is in the hands of three or four firms. They are all leading firms and they do their own drafting, and if they are not of sufficient standing the drafting is poor and is liable to be returned by the office.

Q. When a case actually comes up for hearing, I understand issues are usually settled at the end of the plaintiff's opening.

A. That is so, but cases are not opened by the plaintiffs.

Q. Why is that—because the judge considers it a waste of time?

A. The counsel are not sufficiently prepared to know what their case is and what they are going to prove at the end.

Q. And if you do not commit yourself to opening, you can change in the middle?

A. The whole tactics are so adapted as to enable them to change it at any time of the hearing.

Q. When judges settle issues at the end of the plaintiff's opening, do you usually find the issues covered by the pleadings?

A. Issues are usually covered by the pleadings. In certain cases the pleadings have got to be amended to settle the real issues.

Q. On the Original side, you think that the rules in the Code are applied not technically but in spirit, and powers for amending are fairly liberally exercised?

A. They are fairly liberally exercised.

Q. I take it in the High Court cases are heard from day to day?

A. They are.

Q. How long does it take for an appeal to be got up from the Original Side?

A. Appeals on the Original side are part of appeals dealt with on the Appellate side. On the Original side an ordinary case comes up within four to six months.

Q. I take it that a separate list is kept of appeals on the Original side.

A. I am not sufficiently acquainted with the Appellate side.

Q. Can you tell me, when an appeal is brought from the judgment of an Original side Judge, whether the judgment, the evidence and the pleadings are printed by the court?

A. Bench copies are prepared but I am not quite sure one or two. They are typed by the typing staff.

Q. Do they go to office and say what documents they have to type and do they prepare a sort of paper book?

A. They leave it entirely to the office. Practically the whole of the main file is copied out.

Q. When a judgment is delivered is it taken down in shorthand?

A. When it is delivered in the court it may be taken down in shorthand—there are shorthand writers provided. Ordinarily when it is delivered in the court it is taken down in shorthand.

Q. What about the evidence? How is it taken down on the Original Side?

A. That is taken down by the Assistant Registrar.

Q. That is the man who sits in front of the judge?

A. Yes.

Q. You have not got shorthand writers?

A. No.

Q. Is the judge supposed to keep notes?

A. He keeps certain notes entirely for his own use in his note book.

Q. If one goes to the High Court on the Original Side how many men do you find sitting before the Judge?

A. One is the Bench Clerk.

Q. What does he do?

A. He sorts out papers and puts them in a form of a book. The man who is taking down evidence is engaged for the whole time in writing.

Q. If there was a staff of shorthand writers for taking down evidence you can dispense with the Assistant Registrar.

A. This question has been recently considered by the Hon'ble Judges but the question arises whether you can dispense with them.

Q. Does the Assistant Registrar keep a short minute?

A. What is called the diary of a case is written up by the Bench Clerk under the supervision of the Assistant Registrar.

Q. I take it that the Assistant Registrar is a highly-paid man. Much the same position existed in Calcutta about a year ago and on the recommendation of a Committee it was altered, so that instead of having Assistant Registrars for writing down evidence in long hand, shorthand writers are to be provided.

A. The evidence here has to be read out after being recorded.

Q. On the Original side, is it mostly the case that evidence is interpreted?

A. Yes.

Q. And I think it is a very good thing to have shorthand writers to take down notes?

A. But shorthand writers, who are competent to take down notes, are not obtainable in Rangoon. They can be obtained from India. Notes taken or what is taken down by the judge is read over and this I think serves no useful purpose. It simply gives scope to the man to make alterations and amendments to what he has already stated.

Q. Do you get a good many cases of attachment before judgment in Rangoon?

A. Yes, quite a number.

Q. And do you feel any difficulty about that? Is that provision freely exercised or not freely exercised?

A. On the whole I think the tendency is to grant these applications with conditional attachment before judgment.

Q. Do you get good many cases of *ex parte* injunctions?

A. Yes. *Ex parte* injunctions are invariably asked for.

Q. What about cases of investigation of claims?

A. We have a fair number of cases of that kind.

Q. I understand the system of the High Court here is to charge court-fee? Has that always been so?

A. Yes, sir, that has always been so. We have scales of court-fee as there are in Chartered High Courts in India.

Q. Have you noticed any abuse in connection with the Court-Fees Act? Are there many suits for declaration?

A. Yes, sir, quite a number. Suits for declaration are common.

Q. Are there any cases where the Court-fees Act is abused to a certain extent? Is there insufficient charge for exceptional cases?

A. Yes, you can say there is insufficient charge for exceptional cases, but it is very difficult to differentiate between a genuine case and other cases?

Q. With regard to receivers, I am not speaking of insolvency matters who deals with that work?

A. There is the official receiver of the court. If both the parties agree to have a private receiver, the court does not send the case to the official receiver.

Q. Has he a large establishment under him to enable him to do the work?

A. He has got sufficient establishment. It is entirely a salaried post now. He holds a post which is a combination of several posts:—official receiver, official assignee, public trustee.

Q. Do you think there are always competent men available to do that work?

A. Yes.

Q. With regard to insolvency work, is it going on satisfactorily in Rangoon?

A. There is one difficulty and that is that the Official Assignee is never present at the time of public examination. I have done that work for many years, but there is one Deputy Registrar who does that work.

Q. What happens when a man turns up for public examination?

A. The examining officer has got records and he puts questions from them.

Q. Is it not a fact that the record consists of schedules? What about the question of adjudication of people?

A. Debtors are adjudicated *ex parte* by the Deputy Registrar.

Q. Is there any committee of creditors?

A. The work is entirely done by the Official Assignee without any reference to creditors?

Q. I think under the Insolvency Rules there ought to be a committee of creditors for looking into these matters?

A. It is not compulsory and it can be done by the Official Assignee. If the case is of any difficulty or important, he generally does convene a meeting of creditors, but I do not think he constitutes any committee.

Q. But there has to be a meeting of creditors?

A. Yes, sir.

Q. Do you think that the Official Assignee takes interest on behalf of creditors and helps them to collect assets and so on?

A. If the creditors are anxious he may help them in this connection, but as a rule very little is done by the Official Assignee.

Q. They sometimes do it through the Official Assignee.

A. Yes. He does it regularly. He is supposed to do it.

Q. There is not much use in altering the law of insolvency here?

A. No, except that it all depends on the particular gentleman who is the Official Assignee.

Q. In Rangoon you get on the Original side a certain amount of work in connection with Indian Arbitration Act?

A. Yes.

Q. A good deal of arbitration work from commercial men in Rangoon?

A. In all insurance cases there is arbitration.

Q. Do you find the Chambers of Commerce form arbitration courts?

A. Yes.

Q. Is there a system of arbitration, a register or a panel of arbitrators who carry on the work?

A. No. They do not assist in any way in the way of arbitration.

Q. I am speaking of the Chambers?

A. They have a panel and they have arbitration.

Q. I suppose your connection with them on the Original side is that when they come to file decrees, somebody comes and objects to the awards?

A. Very rarely arbitration awards come before the court.

Q. They do not take the award to court?

A. I do not think there have been more than one or two instances.

Q. Do you find that suits are sent for arbitration under schedule 2?

A. They are made very frequently.

Q. And are they successful arbitrations or are they a waste of time?

A.—They do end in waste of time not infrequently, and sometimes references are made to people who eventually back out or when they do proceed with the arbitration, they will go on and mess up matters altogether, and there will be more trouble in the end than at the time of the hearing.

Q. You think that suits for declaratory decrees after attachment in regard to movable property of the value of Rs. 2,000 and less should lie in the small cause court?

A. I think so.

Q. You think that limitation in cases of specific performance of contract in respect of movable property might be cut down?

A. Yes.

Q. The first question is about the competence of a judge. This sort of suits is apt to take a longish time. Don't you think they were excluded from Small Cause Court not so much because they will be incompetent, but because they will not be able to dispose of them quickly?

A. Very often these are suits of a very simple nature and if summary procedure is applied no harm will be done to anyone. If a summary of the evidence is taken, then these suits would not take up very much time in Small Cause Court.

Q. You suggest that Small Cause Courts should not deal with immovable property. What do you think of that?

A. I do not think they should deal with immovable property. They are not familiar with the procedure regarding immovable property. The High Court rules are not very dilatory.

Q. What about summary procedure in the strict sense under Order 37? You do a lot of business.

A. Very rarely.

Q. Have you any other summary procedure?

A. No.

Q. In ejectment suits in Rangoon I think there is sometimes no defence at all. It can be hung up for months together. Don't you think it would be better to deal with them as in England?

A. These ejectment suits, if it appears from the written statement that the defence is a shadowy one, or there is no defence, are brought to a dead stop. I do not think it would be quite safe to apply summary procedure to ejectment suits and other suits.

Q. If the defendant knows that he would get leave for defence?

A. Whenever the defendant has any defence at all, he is bound to come in and ask for leave and he is bound to be granted leave. When he has no defence and he does put in a defence the court exercises its power and sees that no frivolous defences are there to delay the suit.

Q. Under the rule you can give him a conditional leave to defend. Don't you think it would be salutary in some cases?

A. It would. The trouble is that shadowy defences are filed in cases which are not suitable for summary procedure.

Q. As regards service of summons, what is your difficulty in the city of Rangoon? Is it fairly easy?

A. It is easy. There is no difficulty.

Q. How long does it take to get service effected?

A. Two weeks. Two to three weeks in ordinary cases.

Q. What is happening during the two or three weeks? Why should there be two to three weeks instead of two to three days?

A. After a summons is issued, I think there are only two or three process servers to cope with the work.

Q. Are there not enough process servers? Is that one difficulty?

A. Yes. Summons could be served in less than two weeks if there were more process servers. We give them three weeks for the return of service.

Q. In the city of Rangoon the bailiff and the staff are under the High Court who serve the process?

A. There is a separate staff for the High Court.

Q. How big is that staff?

A. I think in the actual process serving staff there are two or three men.

Q. Is there any complaint about the service of processes in the High Court?

A. No.

Q. Is there any difficulty about getting copies in the High Court?

A. There is a considerable amount of agitation about the delay in getting copies.

Q. There are not enough copyists?

A. That is my opinion.

Q. Are there enough translators in the High Court?

A. That too is not easily got. I think an increase in the staff of translators might do something to expedite the work. The system is that when an interpreter is not engaged on interpreting work he has got to do the translation work and sometime the work gets into arrear. There is no special staff to do the interpretation work but on the whole there is not much complaint about the delays in translation.

Q. About copies of decrees, is there any delay?

A. I am afraid there is a delay.

Q. What is the cause of delay?

A. The judgments are generally available within a short time but some time elapses in writing the decrees on the Original Side. There is very poor staff on the Original Side and often new men. Clerks are not sufficiently paid.

Q. Supposing there is a mortgage suit of an ordinary type. What happens? Who draws up the decree, the bench clerk or somebody in the office or do the parties or the counsel settle the decree?

A. Ordinarily the assistant to the Chief Clerk on the Original side makes up a draft and puts up to the Assistant Registrar, who is also doing office work. If he cannot himself deal with the draft quickly he puts it before one of the Deputy Registrars.

Q. When the decree is drawn up do you send for parties and settle it with them?

A. As soon as the draft is faired, we post a notice that the decree is ready for inspection and if no objection is taken for four days that draft is signed.

Q. Then in cases which require rather special attention they leave all the work to the office in the first instance.

A. Entirely to the office and in fact when we feel that it is best to let them see the decree, we take the initiative and have the decree sent to them.

Q. Now, as regards execution what are the main difficulties here in the High Court.

A. We have no difficulty. I think our work goes through very quickly.

Q. Do you find that people get satisfaction of their decrees or do you find that great many decrees are not satisfied?

A. Almost all the decrees are satisfied.

Q. Do you find that people who get money in satisfaction of their decrees get it acknowledged on the books of the court?

A. They do not.

Q. You think there is a good deal of amount paid on the decrees but there is no record, *i.e.*, satisfaction is not recorded?

A. I cannot say that, I think in most of the cases satisfaction is recorded.

Q. So far as you are concerned, there is no case for making the law on that matter any more stringent?

A. No.

Q. As regards execution have you any amendment to suggest, for instance limitation? At present a person is allowed twelve years and he has to keep the decree alive every three years. Would you be in favour of dispensing with that altogether and if necessary reducing the period for which the decree is to be kept alive?

A. If you do away with the need for keeping a decree alive and if you allow him to put an application for execution at any time and to suddenly jump upon the judgment debtor that procedure is liable to be abused. I do not think that period of twelve years should be shortened because the decree holder makes every effort to execute his decree in shorter time but it does turn out sometimes that the judgment-debtor's concealed property cannot be traced and I think the period of twelve years might stand. No one who can possibly expedite execution has been known to delay it.

Q. You might have not known it but is that a fact in practice? Do you not find that there is a tremendous amount of negligence on the part of the decree-holder?

A. In rare cases where a death occurs in a family it takes away attention from the decree and then it remains unexecuted for a long time, but it is not of frequent occurrence.

Q. Have you had any difficulty in regard to commissions to take evidence in England or other places.

A. Many commissions are issued to places in India. There is not much difficulty about commissions sent to England.

Q. Do you issue it to Indian Courts?

A. We have to issue them to the judge of the Small Cause Court and leave it to him to appoint a commissioner.

Q. Do you get your commission back in good time?

A. The commissions generally do not come back in proper time.

Q. Can you suggest anything by which it may be improved?

A. The trouble is that sometimes parties do not put in their appearance before commissioners and keep on applying for postponement and so on. In my opinion the only remedy that can be suggested is that re-issue of commissions and extension of time should not be allowed except on very good grounds. Sometimes a good deal of time is wasted in these matters. In an *ex parte* case a man takes out a commission for some evidence which he considers necessary and in this months together are wasted.

Q. But is not the order for commission cancelled?

A. It is eventually done after a good deal of time is wasted.

Q. Does not the defendant apply for it?

A. Counsel for defendant do not generally do it at the proper time.

Q. Then you suggest that to prevent delay in realising a decree, the court should be empowered to issue warrants of arrest addressed to the Head of the Criminal Investigation Department which may be transferred on endorsement from province to province—the decree-holder meeting the cost? Do you think that will be possible?

A. I think it will be very advisable. We have recently done that in a case of insolvency and we have succeeded in it. It will prove very effectual in the case of absconding debtors. They will surely be caught in this way and the fruits of the decree can be reaped.

Q. Have you any difficulty with regard to witnesses who have been summoned and do not attend the court?

A. Very rarely.

Q. Have you ever in the High Court any case of an estate being managed by the court's receiver for an indefinite period?

A. Yes. Not only by the court's receiver, but in some cases by the private receiver.

Q. Do you not think that that work should go to the Public Trustee instead of the Official Receiver? Do you not think that the court should be empowered to get rid of it?

A. Yes I think so.

Q. Do you find trouble in cases where land has to be leased out from time to time and new tenants have to be obtained? I think the trouble sometimes arises with the Executive Officer on the spot?

A. In such cases certainly trouble has come to my notice. It is a very difficult thing to do for the receiver. He has got an agent and sends him to collect rent.

Q. Do you think that people on the spot think that the management of the court is not good?

A. No, sir.

Q. Are you in any way in favour of restriction of right of appeal?

A. I have made one or two suggestions, I think.

Q. You suggest something about execution applications and interlocutory applications. Do you not think that in execution matters a right of appeal should be given? Do you think that right is abused in Rangoon or Burma?

A. I do not think that the right is abused, but now-a-days there is a tendency to appeal against anything and everything under the Letters Patent.

Q. Of course in the High Court you have appeals under the Letters Patent. Do you find any difficulty in defining a "judgment"?

A. No, we have no such trouble.

Q. In many cases simple orders are passed and appeals are preferred against such orders. Do you find any difficulty in finding out whether it is a judgment or not? Would you consider such orders as judgments?

A. Many orders are considered as judgments and appeals are made against them.

Q. So there are good many such appeals from orders of a High Court Judge. Do you think anythiny can be done in this connection? Do you consider that section 13 should be more well defined or narrowed in any way?

A. I think I have made some suggestions with regard to that.

Q. I am simply dealing with the Original side appeals from interlocutory orders. Do you think that is abused?

A. The tendency seems to be in that direction. A great many appeals are beginning to be filed.

Q. What about stay of execution? Supposing a judge on the original side gives a judgment to the plaintiff for a considerable sum of money. What happens after that?

A. Stay of execution is applied for.

Q. What does the court do? To whom does he apply for stay of execution? Does he apply to the trying court?

A. He files his application in the court of the Deputy Registrar and then that application is submitted to one of the judges who is going to form a bench. Usually notice is issued and *interim* stay is granted.

Q. Then does the thing go on for a long time? Does it take two or three days?

A. It takes two or three weeks.

Q. So they can get two or three weeks merely on asking?

A. They have to make some case on affidavit.

Q. When the *interim* stay is over does the appeal go before the appellate bench? What does the appellate bench do? Does it pass an order of the ordinary form? Is the stay likely to continue? If it is so is sufficient security furnished? Are you familiar with the actual practice as regards the appellate side?

A. To a certain extent I am familiar with it.

Q. I want to know as regards your paper books, the system of appeals, the preparation of the material for the court on the appeal, etc. I understand that what happens is that somebody in the office practically types up the main file so that there are two copies ready for the court.

A. Yes. All proceedings except process.

Q. All typed up?

A. Yes.

Q. By the court staff?

A. Yes.

Q. As regards a lot of documents which it may be entirely unnecessary to refer to at all, are they all typed out automatically?

A. As far as I know they are automatically typed out. Not much discrimination is exercised.

Q. You have seen the papers after the appellate judges have done with them. Don't you generally find only 1/5th of the typed matter is marked out?

A. Yes.

Q. Would you introduce a more business-like system? Would you make the people come and say what is necessary for appeal and what is not necessary for appeal?

A. Certainly.

Q. Whether they are printed or not, I think a great deal has to be said on the other side?

A. I think our system has been working well and it is cheaper.

Q. If people would only not have the things not necessary copied out?

A. Now-a-days typed copies are as good as printed copies.

Q. Would you be in favour ot a rule that all pleadings should be printed, —that is not a matter of much expense?

A. I do not think it is necessary here. For appeals in the High Court, it is not necessary. It means expenditure of time and money and trouble because you have got to send out a typed copy to the press.

Sir T. Desikachari.—*Q*. Going through your Civil Statement No. 28, I find quite a large number of original suits in value—less than Rs. 500 in High Court. How would a suggestion that a City Civil Court should try those cases appeal to the public here? What is the good of the High Court deciding all these petty suits to the value of Rs. 1,000?

A. The question has often been discussed and the general opinion is that the City Civil Court is not favoured by the public opinion in Rangoon.

Q. What is the public opinion? Is it the opinion of the Bar?

A. The opinion of the Bar is in the other way. Pleaders who do not practise in the High Court would welcome it.

Q. Those who practise in the High Court would not welcome it?

A. Yes.

Our system is practically the district court system on the original side. The costs are not so proportionately heavy as in the Calcutta or Bombay High Court.

Q. But a subordinate judge on Rs. 600 or Rs. 800 can dispose of such cases.

A. There are so many cases. In a thriving and rich seaport city like Rangoon, they do not attach very much importance of that sort.

Q. I am thinking of suits of less than Rs. 1,000. Surely these are suits, which outside Rangoon, will be disposed of by a subordinate judge?

A. Yes.

Q. That takes away all but 225 of your suits. Why should a judge who is paid Rs. 4,000 be made to try these suits? Why should not a man of the status of a subordinate judge be made to dispose of them?

A. All these suits do not take up the time of the High Court Judge. Many of them are undefended and are disposed of by the officer of the Court *ex parte*.

Q. What is the proportion of contested suits?

A. About 50 per cent.

Q. Why should they not be tried by a judge who is paid less?

A. But the majority of these suits are of a high value or of a very difficult nature.

Q. Are they more difficult than suits outside Rangoon?

A. I cannot say as regards Madras. But most of the defended cases on the original side are of sufficient importance and on the whole I think the public in Rangoon prefer this system. They find disposal of work by the High Court Judge more satisfactory, but probably there are very few appeals from those decisions. I do not know what happens in Madras. It is quite possible that a good number of decisions are appealed against.

Q. Was public opinion taken at any time?

A. Public opinion, I believe, expressed by the Chamber of Commerce, as far as I know, has always been against a City Civil Court, and the judges have refrained from making that suggestion. It has been several times mooted during the last 20 years, but they have never gone further. No one seems to be keen about it.

Q. And there is no strong opinion either for or against it?

A. The question has not been very much considered by the public here.

Q. In Madras there was some objection to that at the beginning, but eventually they had a City Civil Court.

A. As to that they have said that Madras is a poor Presidency, and that consideration does not apply to places like Rangoon.

Q. So you have plenty of money to spend?

A. People do not grudge to spend. As I said before, these small suits do not take up the time of the High Court Judges.

Mr. Dunkley.—*Q*. You said that pleadings are generally very well drawn up. Of course you meant in the High Court?

A. Yes.

Q. Then you talked about young advocates. Is it not the case that before a beginner is admitted as an advocate of the High Court, he has to read in Chambers either in England or in Rangoon. 12 months in England or 2 years in Rangoon?

A. Unfortunately he does not do anything in England. I know what they do there. They merely got a certificate.

Q. Any way there is a rule?

A. It is all due to the indifference of the young people themselves. There is plenty of opportunity for them here to learn practical work, but they do not seem to avail themselves of the opportunity. They do not do anything at all in England. They simply go and enter themselves and get a certificate.

Q. You said a first appeal in High Court comes on for hearing after 5 or 6 months. Is not the average duration about a year?

A. I may be wrong.

Q. Is it not a fact that the District Court appeals are decided very much more quickly?

A. I must say that many postponements are obtained before and after hearing. That is not the fault of the court. Some appeals which take very long, add to the general duration.

Q. As regards commissions issued in India, I take it that when a commission is issued, the first thing is to fix a date by which the party should appear. Is it not rather difficult that we never get any intimation from the court in India as to whether the parties have put in any appearance or not? The thing goes on month after month and we hear nothing.

A. Some of the commissioners write and intimate to us in case no appearance is entered. They think the only course for them to adopt is to write and inform the court that such and such a date has been fixed.

Chairman.—Then you might find it difficult to get any reply at all.

A. Yes.

Q. And therefore you think that you want some rule by which you can find out whether the party has put in appearance within the time allowed.

A. I think that if the appearance is not put in within due time the commission ought to be returned. But the trouble is that the commissioner is not willing to part with it. He does everything to obtain extension.

Mr. Chari.—*Q*. Do you think there is a good deal of loss to creditors from assets not being realised?

A. Yes.

Q. Can you suggest anything by which you can get over that difficulty?

A. If the creditors are apathetic I do not see what can be done. I think some of the creditors who are in a position to give trouble are generally squared up earlier because the insolvent knows the man who is going to give him trouble and he fixes him up.

Q. Would you enlarge the powers of the official assignee to help the matter in any way?

A. I think the official assignee has ample powers but the only difficulty is to know what the assets are and where the assets are.

Q. Do you think in simple mortgage suits it is necessary to give six months from the date of decree?

A. Not from the date of decree.

Q. That is what we do.

A. I think it must be altered. It should be from the date of filing of the suit. If not, three months might suffice. In some cases, of course, the man can obtain extension, but ordinarily the mortgagor does not pay and he compels the mortgagee to apply for a final decree. I think the period ought to be shortened.

Chairman.—Of course you are not obliged to give a man six months.

A. We have altered the rule and made it compulsory.

Mr. Chari.—In the Code it is not. We altered it because we found in one case a judge gave only eighteen days.

Is it your experience that in this country as soon as a debtor applies for insolvency, the creditors give up all hopes altogether?

A. If the debtor is a slippery one they give up all hopes.

Messrs. A. McKEAND, J. MORRISON and S. E. GOLDING, Representatives, Burma Chamber of Commerce, Rangoon.

Written Statement.

Letter to the Chairman, Burma Chamber of Commerce, No. 67 W.-24, dated the 28th March 1924, from the Deputy Secretary to the Government of Burma, Home and Political Department, handed over to the Imports Sub-Committee of the Chamber for disposal:—

The Imports Sub-Committee after considering the question of the law's delays are of the opinion that it is the administration of the law in connection with insolvency matters that gives the mercantile community most cause for complaint and have decided that the occasion should not be allowed to pass without putting in a very strong complaint about the administration of the Presidency Insolvency Act by the High Court.

It being not quite clear whether the working of the Insolvency Law comes within the scope of the present inquiry, the Deputy Secretary to the Government of Burma, was addressed in the matter on the 26th April but as the Chamber's representative has been summoned to appear before the Committee on the 1st May it has been necessary to go on with this report before receipt of a reply.

There has not therefore been much time for the Imports Sub-Committee to prepare a case.

The questionnaire is mostly too highly technical for the ordinary person to give an opinion about.

The Sub-Committee propose therefore to leave that to the lawyers and to content themselves with stating their complaints and citing cases in support of same.

The commercial community generally try to avoid the law courts as much as possible, and even in insolvency cases they much prefer private settlements; but in recent years, bankrupts (some of them suspected to be fraudulent) have discovered that the official assignee's office affords them a sanctuary, and assists, rather than deters, them in their efforts to avoid paying their creditors their just debts.

Our chief complaints against the official assignee's office are:—

1. Delay in making insolvents' file proper schedules.
2. Inadequacy of the official assignee's public examination of the bankrupt.
3. Usually little effort is made to collect the bankrupts' assets, other than realising by auction sale the contents of his place of business; or to ascertain what other property an insolvent may have elsewhere (anything done in this direction is mostly done by the creditors themselves).
4. No pressure appears to be brought to bear upon the insolvent's debtors. Pro-notes, after having been pigeonholed for an indefinite period, are usually put up to auction and sold for a nominal sum, whereas were an effort made immediately the petition was filed to collect these direct from debtors, considerable sums would be realisable for the benefit of the creditors.
5. Delay in distributing dividends when collected. Section 69 (2) of the Act says :—

   > "The first dividend (if any) shall be distributed within six months of adjudication unless the Official Assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date."

   A recent case can be cited where the first dividend was not paid until 24½ months *after the auction sale* of the insolvent's goods, and that only after one of the creditors had written twice enquiring about it.

6. When compositions are effected delay in enforcing payments of instalments as agreed upon.
7. Delay on the part of the official assignee in preparing and filing his reports.

   Instance Case No. 97 of 1921. T. K. Fakir Meera & Co. Report not yet issued.
8. Insolvents are permitted to leave the country (or leave without permission) while their affairs are being investigated.

   During the recent Easter vacation a dealer who filed his petition about a year ago, but who has not filed any schedule is reported to have left for India.
9. In case of suspected fraudulent insolvency the official assignee should have the power to call in the Criminal Investigation Department to make investigations regarding the disposal of property prior to the filing of a petition.

   There are cases in the hands of the official assignee now in which this should be done.
10. A frequent difficulty that Rangoon merchant creditors have to contend with is that insolvent debtors clear out of British territory to Native States and remain there and are thereby able to snap their fingers at their creditors. If the official assignee took action promptly they could very often be prevented from escaping in this way.

    Not long ago in dealing with a case of an absconding insolvent Mr. Justice Rutledge said :—

    > " In the present Insolvency Board several cases have come before me where two or three persons purport to carry on business as traders who obtain credit, sometimes to a considerable extent, and one of them absconds with the books and assets and the other one pretends to be in complete ignorance of the intention of his late partner to abscond or of any knowledge whatever of the partnership business. From my previous experience of the Insolvency Court this seems to be not an uncommon type of fraud and hitherto it seems to have been a very successful one. The parties disappear generally to some remote part of India leaving no trace and the ordinary means at the disposal of the Court or the office of the Official Assignee are utterly incapable of dealing with the absconders or of tracing their whereabouts. I accordingly request that in all cases where an insolvent or a member of an insolvent firm absconds taking presumably with him either assets or books of accounts, the Official Assignee without delay will take the orders of the presiding Judge in insolvency as to whether the facts of the case should not be transmitted to the Criminal Investigation Department for the purpose of tracing the whereabouts of the absconder and bringing him before the Court."

    It is to be hoped that this order will be carried into effect in all such cases.

As an example of the entirely unsatisfactory administration of the Insolvency Law in this province, we cite *Case No. 6 of 1921, Hajee Dawood Khan Mahammad & Co.* The three partners in this concern were adjudicated insolvent on 10th January 1921. Two of the partners went to their country in Kathiawar and have not yet appeared for public examination nor has any serious attempt been made by the Official Assignee to secure their attendance so far as we are aware.

In this estate the assets realized Re. 0-3-2 per rupee and in the case of the 3rd partner, who appeared for examination, the Judge suspended discharge (only on 12th February of this year) until 6 annas should be paid on the ground that insolvent had continued to trade after knowing himself to be insolvent but gave him protection so long as he paid Rs. 15 monthly towards his debts. Such protection, given 3 years after adjudication in an estate involving Rs. 2½ lakhs of liabilities, constitutes in our opinion an absolutely *farcical* administration of justice.

Messrs. McKEAND, MORRISON and GOLDING, Representatives of the Burma Chamber of Commerce, Rangoon, called and examined on Thursday, the 1st May 1924.

Chairman.—*Q.* You represent the Burma Chamber of Commerce?

Mr. McKeand.—Yes.

Q. Is it a European Chamber of Commerce exclusively?

A. There are only one or two Indian members.

Q. But substantially European commercial interests of Rangoon?

A. Yes.

Q. What are your main trades here—one I suppose is paddy?

A. Paddy, timber, oil from the Burma Corporation Mines, these are the main exports, and then the main imports are piece-goods, hardware, machinery and sugar.

Q. The statement that has been sent to us deals with certain complaints as regards the administration ot the Presidency Towns Insolvency Act in Rangoon. Apart from that, would you mind just telling us something about the commercial litigation in Rangoon. I understand that the High Court gets a good many commercial suits: so far as your Chamber is concerned have you any special complaint as to the delay in the trial of these cases?

A. There have been certain delays but they are unavoidable in this place.

Q. You are very much better off than commercial gentlemen in most of the other cities. The duration of cases here is not very great. You can get a case for hearing in the High Court in five months?

A. No.

Q. How long does it take?

A. One case of mine filed on the 9th April last year (1923) has not been heard as yet.

Q. Why has it not been heard, do you know?

A. I have very little to tell you.

Q. Can you give us the number of it?

A. It is a trade mark case and it has been for sometime before the criminal court.

Q. Has the civil court been waiting for the criminal court proceedings to finish?

A. That may be so.

Q. But there may be some special reason; of course a trade mark case is not an ordinary commercial case. Do you have cases for instance on c.i.f. contracts, accepted bills of exchange and things of that sort?

A. Very rarely. We get commercial cases in connection with rice.

Q. I understand that these cases are listed as commercial cases and they get special attention.

A. Yes, we have been given special attention and there is no special cause of complaint in regard to them.

Q. The actual average figures for 1922 may be misleading with reference to a particular type of case, but the average duration seems to be very good in the

High Court. For contested cases it is 308 days and for uncontested cases 189 days. 189 days is a little bit long for uncontested cases, but 308 days is the total duration.

A. It is not unreasonable.

Q. Have you noticed any point (I am not asking about technicalities) as regards the trial of cases that might be improved? For instance, do you find that when a case comes up for hearing each side gets all the correspondence or do you find them quarrelling on letters and things about which there ought not to be any doubt? Have you any suggestion to make to the Committee so as to make the trial of commercial cases better?

A. I do not think there is very much to suggest.

Q. Would you tell me something about arbitration? Does your Chamber run a sort of arbitration tribunal like that of the Calcutta Chamber of Commerce?

A. We have only arbitration on imports. We have an official list of arbitrators and disputes over quality are referred to the Secretary who arranges arbitration.

Q. Have you any difficulty in enforcing the award of the arbitrators?

A. No.

Q. You do not find applications to set aside awards on technical grounds?

A. We have no experience of that. There was a question as to what certificates should be accepted and we have now inserted a clause to leave it to the arbitration of the Chamber as to whether certificates are valuable.

Q. Let us go to the insolvency question. There is a great difficulty about insolvency. First of all have you any difficulty in getting people made insolvent or do they go in themselves to have themselves made insolvent?

A. It has just been so in recent years.

Q. That people go and apply for adjudication as insolvent.

A. Yes.

Q. Then I understand you say, first of all, that far too much time is given to file a proper schedule and you also say that debtors clear off to India or to Indian States. As regards filing of proper schedules, of course, it is the court's business not to grant too much time and not to protect him unless he files the schedule. How would you prevent people clearing off to other places? What do you suggest as an amendment?

A. The Official Assignee might say—you must report to me once a week.

Q. Supposing he does not do it, what can he do? Supposing the man goes to Bikaner, what can he do?

A. Of course here in Rangoon we can know by which ship he has booked his passage and when he is leaving we can stop him.

Q. If he goes to another province there is a great difficulty in finding him out?

A. We cannot get anything.

Q. When a man is adjudicated on his own petition, do creditors come along and help the Official Assignee? Do you think they regard their money as lost and refuse to waste any more money on this?

A. They help and always try to assist the Official Assignee.

Q. Do you know anything about the Inspection Committee? Do you think that a committee of creditors is appointed to assist the Official Assignee as is provided for by the Act? In this connection, I take it the Inspection Committee can look after these things and help the Official Assignee.

Mr. Chari.—I think they are making some difference between the Creditors Committee and the Inspection Committee?

Chairman.—*Q*. I want to be clear. When a man goes bankrupt there has to be a meeting of creditors and I think that is quite clear. Now what I want to make clear is that a committee can be appointed to act with the Official Assignee and control him and he must take their advice before he does anything on their behalf?

A. Occasionally a committee is appointed but not always.

Q. Of course if creditors want better administration of the estate the only way to have it is to use that power. The law provides that a committee should be appointed to help the Official Assignee and the Official Assignee must consult them before he does anything. He may do something himself if there are very good reasons for that. Do you think that creditors in Rangoon take sufficient interest in these matters and try to manage estates in their own way? That is my point.

A. No, not in every case.

Q. Do you think that something can be done in this case to enable creditors to appoint a committee of inspection?

A. We think so.

Q. I am speaking from my knowledge in England. There the trustee never does anything or takes a doubtful point without the consultation of the Inspection Committee which consists of three or four members. I do not see why this procedure should not be adopted in Rangoon. The Act provides for it and it is an exact copy of the English Bankruptcy Act. Mr. Chamberlain introduced it in 1882. Do you think anything can be done to improve that?

A. Yes.

Q. Have you got any experience of public examination?

A. No.

Q. Every creditor gets notice of the public examination under the Act? Take another point; if the creditor does not come along and place his information at the disposal of the Official Assignee, I think the cross-examination of the Official Assignee cannot amount to much; but, on the other hand, if the creditor comes along and gives information to the Official Assignee of the dealings and affairs of the debtor, that is to say, what he has been doing for the last few months, with whom he has been associating, to whom he has been giving preference and so on, I think the cross-examination of the Official Assignee will amount to much?

A. The creditor has his legal adviser and he can give information to the Official Assignee during the public examination.

Q. Do you think that the legal adviser will be in a better position to supply full information with regard to the whereabouts of the debtor? I think the creditor himself can prove more helpful and useful.

A. Yes.

Q. Have any of you gentlemen had experience of a creditor paying the expenses for the calling of witnesses who may give useful information about the dealings of the debtor? Do you think that creditors meet the expenses which are incurred on making an enquiry into the affairs of the debtor?

A. No, not to a sufficient extent.

Q. Then you say that there is great delay in the distribution of dividends and that they take far too long?

A. Yes.

Q. Then you say that when compositions are effected there is delay in enforcing payments of instalments as agreed upon?

A. Yes.

Q. What happens in that case? If they are not enforced does the Official Assignee give him too much time or what happens?

A. He does not do anything at all. He forgets everything about it and some body else has to bring this to his notice.

Q. Then you say that the Official Assignee should be empowered to call in the Criminal Investigation Department to make investigations regarding the disposal of property prior to the filing of a petition?

A. Yes, we think there is no harm in it.

Q. As a matter of fact the Official Assignee himself has got powers to do this? If you just look at Section 36 you will find that the court may, on the application of the Official Assignee or of any creditor who has proved his debt at any time after an order of adjudication has been made, summon before it in such manner as may be prescribed the insolvent or any person known or suspected to have in his possession any property belonging to the insolvent or supposed to be indebted to the insolvent or any person whom the court may deem capable of giving information respecting the insolvent, his dealings or property and the court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property.

A. Yes.

Q. Then Section 88 of Part V says: "The court may, if it so thinks fit, authorise the creditors who have proved to appoint from among the creditors or holders of general proxies or general powers of attorney from such creditors a committee of inspection for the purpose of superintending the administration of the insolvent's property by the Official Assignee. Provided that a creditor who is appointed a member of a committee of inspection shall not be qualified to act until he has proved." I think these powers are not sufficiently known and exercised? Then Section 89 says: "The committee shall have such powers of control over the proceedings of the Official Assignee as may be prescribed."

A. The Official Assignee does not know anything himself and relies too much on creditors.

Q. The Official Assignee has got to do all these things himself?

A. If you form a Committee, he does not do it; he sleeps on it.

Q. Have you ever known of complaints made in insolvency cases? Have you ever made such a complaint?

A. No. I never made such a complaint.

Q. I mean, as you do of course, people do not like making these complaints. Of course that is the only alternate remedy?

A. I have also on record another case where a Committee had been appointed, but they received very little assistance. From my experience, the assistance that the Official Assignee could give is very much greater than he does give. We do, to a certain extent, rely on the Official Assignee for a considerable amount of assistance. He should take active steps without waiting for the creditors. Our experience is that it is not the case.

Q. Have you got any files or numbers of cases so that we can send for them and have a look?

A. The case that the Steel Brothers have on just now is No. 97 of 1921, the insolvent's name being T. K. Fackeer Meera & Co., also No. 6, Haji Dail Khan Mohammad.

Q. Do you have any points about the discharge of insolvents under the Insolvency Law? What usually happens in India in insolvency cases is this roughly. A man files his own petition. When he is made insolvent, everybody gives up hope. It is left to the Official Assignee. At last the insolvent applies for discharge. One or two oppose the discharge. Then he manages to pay them something and gets discharged. Don't you think that they ought not to be turned loose again on the commercial community?

A. We do not think we shall ever get anything more out of him. The discharge is suspended sometimes indefinitely.

Q. You cannot keep him an undischarged bankrupt for ever?

A. Yes. I have got a case. The name of the party is E. E. Makda. He filed a petition on 17th of January 1922, the auction sale was held in February and the dividend was paid on the 5th of March 1924. He produced books of insolvency not one of which was true. They were prepared to support his insolvency. Recently he applied for his discharge without making any offer for compensation to his creditors. The last order of the court was that he should return on demand 8 annas in the rupee. There was only one man to oppose his discharge.

Q. Unless you pay a certain amount in the rupee, the statute says that you should not be given discharge straightaway.

Is there any other matter you would like to put before the Committee?

A. Just one or two things that we did not refer to in the statement, there is the delay in getting the warrants served.

Q. You mean serving the summons on the defendant at the beginning of the case or delay in execution?

A. I was thinking just now of delay in execution. Say a man has got a decree and then a warrant of arrest. It can be used only in the day and not in the night, but that is no good.

Q. Is that a case where a man is dodging?

A. Yes.

Sir T. Desikachari.—*Q*. May I ask you, have you ever thought of having a City Civil Court in Rangoon?

A. You mean for the trial of commercial cases purely.

Q. All cases generally. I find in the statement of the High Court that there are suits of Rs. 10, 50, and 100 going up to the High Court, and occupying much of its time.

A. I think it would certainly be a benefit. I do not see why the High Court should be encumbered with such cases.

Mr. Justice Stuart.—If of course the cases were outside the Rangoon area, they would be tried by a subordinate judge. Some of the cases are probably not of much importance. For example a mortgage suit might be very simple, it would have to come up before the High Court because the small cause court has no power.

A. Only people who understand the law can give an opinion on that point.

Sir T. Desikachari.—*Q*. I want to ask you a particular question. In cases above rupees one thousand there is an appeal to the High Court. Why should not there be a bench of the Small Cause Court judges to hear those appeals? Have you ever considered that?

A. No.

Mr. Justice Stuart.—*Q*. You have not had small cause court cases?

Mr. Golding.—We had. They act as a rule very expeditiously.

Q. You had no trouble about that?

A. No.

Chairman.—*Q*. Is the instalment order given properly? Is it given freely?

Mr. Morrison.—In some cases the instalment order is given on small basis.

Q. Supposing a man is given an instalment order and he does not keep up to the instalments, you have to apply for execution and then he puts in an application for revision of instalment. Do you have that sort of thing going on?

A. No, we do not.

Mr. CHAN CHORKHINE, Representative of the Chinese Chamber of Commerce, Burma, called and examined on Thursday, the 1st May 1924.

(*No written statement received.*)

Mr. Chari.—*Q*. Who are members of this Chinese Chamber of Commerce?

A. Chinese merchants.

Q. What do your members trade in?

A. Produce of the country and rice.

Q. Do they export rice from here?

A. Yes, mostly to China and the Straits.

Q. How many are they?

A. We have two thousand members.

Q. Have you had any experience of litigation here?

A. My experience is only confined to the Small Cause Court. I have not had the occasion to have litigation in the Chief Court.

Q. Is there any great delay in the disposal of suits in the Small Cause Court?

A. Yes, there is delay.

Q. What is the cause for delay?

A. The first and foremost is that it takes rather long time to issue the summons.

Q. How many days?

A. It generally takes about four days or five days and then we have to get hold of the process-server and this is a difficult matter. The process-server makes all kinds of excuses. He will say "I have got so many things and I will get it served to-morrow" and they have to be taken in a *gharee*.

Q. Have you to pay something to the peon?

A. Yes.

Q. Does he always insist on his being paid before he goes out?

A. That is the common practice.

Q. How much do you generally pay him?

A. Between two and three rupees.

Q. Well, you say that it takes five days to take the summons out of the office, but can you just tell how long does it take to serve the summons on the defendant?

A. It depends upon circumstances, because the process-server has to serve the summons in person on the defendant and not on any adult member of the family residing with the defendant. The defendant generally goes out of his place and tries to avoid service. The trouble is that the court would not issue substituted service unless after the third attempt. As far as my experience goes in the Small Cause Court for the last fifteen years, when substituted service is ordered the defendant always makes his appearance and contests the suit.

Q. So the defendant knows that the case is pending against him but he purposely avoids service?

A. If substituted service is granted the defendant always turns up.

Q. Have you ever tried to get substituted service earlier than the third attempt?

A. No.

Q. Do Judges invariably refuse it here?

A. Yes.

Q. After service of the process, do you think there is unreasonable delay in trying cases above Rs. 5,000?

A. I think there is a great delay. Firstly, the defendant has got to appear before the Registrar on the date fixed for hearing. Then he says he wishes to contest the case without giving any ground or reason, and he is told to go to the Judge the next day. Then he is asked to file his written statement and after that he applies for extension of time which is usually granted.

Q. How long does it take before getting a decree?

A. About six weeks.

Q. Do you think that is too long?

A. After the filing of the written statement generally the case is fixed for hearing and the time given is about a month.

Q. Is it due to the fact that you cannot get an earlier date from the Judge?

A. Yes, sir, that is the case.

Q. Do you think there is any delay in the hearing of cases in the small cause court owing to the fact that pleaders are engaged in other suits and the court has to wait for them?

A. That kind of delay is very very rare.

Q. After the decree, do you find any difficulty in executing it in the small cause court?

A. We have not much difficulty over that.

Q. Can you give us some idea as to the percentage of cases in which executions are successful? Suppose there are hundred cases, can you tell us in how many of them the decree-holder realises his amount in full and in how many in half?

A. In Small Cause Courts they realise their amounts in full.

Q. The whole of it?

A. Yes, or they come to terms and make a settlement.

Q. In execution, have you had any difficulty in executing warrants of arrest?

A. Yes, there is difficulty.

Q. Do you feel the same difficulty as in the case of process-servers going out to serve processes? Have you got to give something to the peon?

A. That is one thing, but sometimes debtors abscond in the day and come back in the night. I do not know from whom they get this information. You can find the debtor at night but not in the day. He leaves his house and goes somewhere else and comes back in the night.

Q. Have you had much difficulty by the judgment-debtor avoiding arrest at Rangoon?

A. Yes, they go to Kamaon and other places outside Rangoon. They try to go out of the limits.

Q. Cannot you get warrants of arrest which may be effected during the night?

A. That has to be sweared to on affidavit.

Q. Have you had much difficulty in getting such warrants? Do the judges freely grant them or do they show reluctance?

A. They show reluctance. It is after two or three attempts that they issue warrants to arrest the debtor in the night.

Q. Have you got any experience of the debtor asking for instalments?

A. Yes.

Q. Have you any complaint against this practice?

A. As regards promissory notes, I do not think the plaintiff has got any good ground to complain, but in rent suits I think instalments should not be given.

Q. Have you ever taken advantage of the new Act relating to distress warrants?

A. No.

Q. Do the Judges grant instalments on insufficient grounds? I am asking you this question because there has been some complaint about that.

A. I have not had personal experience, but I have heard that in some cases, I mean big cases, say of two thousand rupees or more, instalment orders of about Rs. 20 a month are given.

Q. So they take ten or fifteen years to discharge the debt?

A. Yes.

Q. Have you any experience of the insolvency side of our High Court here?

A. No.

Q. Your experience is entirely within the Small Cause Court?

A. Yes.

Q. Have you any general suggestions to make to improve the Small Cause Court?

A. First and foremost when the defendant comes to contest, he should give his grounds.

Q. Do you know that there is a rule in the Civil Procedure Code known as Order 37 where a defendant has got to get the leave of the Court before he can defend a suit? Would you advocate a rule like that?

A. Yes. And that is for Negotiable Instruments. I think in rent suits also after money has been obtained, for subsequent money and subsequent period after obtaining the decree, it should be extended. What I say is between the same landlord and the same party, the suit should go on as a regular suit, and for subsequent months, I think the summary procedure should be extended.

Q. As to the rate of rent or what?

A. Supposing I am your tenant. You file a suit against me and you get a decree and for arrears of subsequent months summary procedure should be adopted.

Q. You mean to say, after a decree has been passed fixing the rent and so on, for subsequent months he raises a defence?

A. He contests simply to gain time. What I say is that there is no defence whatever. If he said he had paid the money, he should be able to produce the receipt. If he could not produce, then there is no ground whatever.

Q. Do you think we could give jurisdiction to the Small Cause Court here, from what you know of the Judges, over simple mortgage suits? Do you think we can give them jurisdiction to try them here?

A. No doubt, it will be a benefit to the public, but in that case the Judges should be recruited from practising lawyers of at least 5 years standing.

Q. If that is done you think we could give jurisdiction to the Small Cause Court?

A. Yes.

Q. And for simple partnership cases, do you think we can give powers to Small Cause Court?

A. That would give facility to the public.

Q. Do you think there will be any difficulty in excluding simple mortgage decrees?

A. I do not think there will be. It will be much quicker than in the High Court.

Q. As a big landlord here, have you had any big mortgage suits to file?

A. Yes.

Q. Did you find any inconvenience from the length of time given to the mortgagor to pay the money, say six months?

A. I think six months is reasonable.

Q. Because he has got to raise his money?

A. **Yes**

Written Statement of the Chief Judge of the Small Cause Court, Rangoon.

1. In the Rangoon small cause court, the average duration for the disposal of suits during the last nine years has been about 70 days for contested and about 45 days for uncontested cases exclusive of those postponed *sine die.*

This average can be improved on only to a small extent.

2. Having regard to the lack of sufficient interest taken by litigants as a whole in the prosecution of their cases, even a slight reduction in duration is a matter of some difficulty. Inattention to the service of processes is the primary cause of much delay. The practice of not fully instructing legal practitioners by litigants at the commencement of a case is also another serious cause of delay. This often results in more or less belated applications for the issue of commissions. The disregard of the period fixed for the return of commissions by the Courts to which commissions are issued, whether in India or in Burma, is another cause of delay. The necessity of translating vernacular documents often causes delay. Also see answer to question 8.

3. I can suggest no remedy except the framing of rules to compel litigants to take more active interest in the prosecution of their cases.

8. The existence of the other Courts in Rangoon does affect the appearance of members of the legal profession in the Rangoon Small Cause Court. Fixed dates are given for contested cases, but when Advocates or Pleaders find themselves caught in cases before the High Court or even in other Courts, they prefer to attend elsewhere than in the Small Cause Court. Without causing a hardship to litigants it is not always possible to refuse adjournments when Advocates or Pleaders are so absent. To insist on other Advocates or Pleaders being retained would mean an extra cost to litigants for which they cannot be compensated.

15. The Rangoon Small Cause Court has been given jurisdiction over ejectment suits, and I do not think that it can, as at present constituted, take any more additional classes of suits.

16. (*a*) This is provided for under the Rangoon Small Cause Court Act but has not been taken advantage of so far. (See Schedule I to the Act.)

23. Yes. The first suggestion would tend to reduce the number of frivolous applications. The second suggestion would tend to expedite the hearing of suits.

25. The application of the procedure under section 106 of the Transfer of Property Act to civil suits would help to reduce delays due to non-service of summonses, but safeguards should be provided to ensure the correct address of the defendant being given.

26. Plaints filed in this Court conform to the forms given in the Code of Civil Procedure. When not adhered to, the plaint is returned for amendment.

27. Yes, in most cases. Written statements sometimes fall short, but a return for amendment or a few questions put to the persons filing them effect a remedy.

28. It would not be safe to rely on service by post entirely. A faulty address would mean the return of the cover with an endorsement "not found" or "refused." Perhaps it would be effective sometimes; so it might be introduced as an alternative means of service to be allowed, at the Court's discretion, on application.

29. After all parties have entered appearance there is seldom any difficulty to effect service for any purpose of the suit, or execution. The rule is not objectionable.

30. The rules of this court provide ample opportunity to effect service with the assistance of a party (see Small Cause Court Manual, p. 60, *et seq.*)

32. Parties generally plead to the point and so examination under Order X is not usually necessary. On rare occasions such examination has had to be made. Interrogatories are not commonly delivered in this Court for the same reason. Affidavits of documents are, however, called for in many cases.

Order XII is hardly resorted to. Often a party who has a document which he wants admitted produces it when the written statement is filed—and the matter is settled then and there.

33. This suggestion is particularly useful for a Court of Small Causes, and would, in my opinion, tend to minimise the calling in of unnecessary witnesses.

34. This rule is hardly ever enforced in this Court, because, I think, of the inconvenience of meeting the witnesses' expenses except by subpœna.

35. The way to prevent useless witnesses being called is to make the party citing witnesses not examined or who turn out to know nothing relevant to the case, bear the cost of such witnesses whatever the result of the suit may be—unless, of course, in the first case the examination of the witnesses has become unnecessary owing to the collapse of the opponent's case.

46. Dates are given in this Court in the presence of parties or their Pleaders.

47. Most commissions from this Court are on interrogatories, but inspite of that delays occur in their return, due mainly to the witnesses not being found. In some cases, however, the delay has been due to the Court executing the commission not returning it when completed, though why I have not been able to discover.

48. (1) Yes.

(2) Not in the Chief Judge's Court.

56. (*a*) Six years are sufficient. If a decree-holder cannot recover in that time he is hardly likely ever to recover afterwards.

(*b*) I agree, particularly for decrees of this Court.

(*c*) The proposed change is reasonable. I agree that the decree-holder should be allowed to execute the decree at any time within the six or twelve years' limit. It would do away with a number of infructuous applications.

58. The suggested alteration is good. It would save much unnecessary litigation.

59. This would be an improvement and prevent the hanging up of execution for non-service by evasion. If the second proviso to Rule 16 of Order 21 be deleted it would enable sureties to recover their payments from the principal debtors without the necessity of a fresh suit.

60. Order 21, Rule 21, may safely be deleted.

61. Order 21, Rule 22, is unnecessary. The notice on the petition in which the substantial relief is asked for is sufficient.

62. The rule as it stands appears to meet all requirements and a change is unnecessary.

70. Yes, but I am afraid I can suggest no remedy.

The provision for arrest or attachment before judgment in the present Code is effective when availed of.

80. This suggestion is excellent, but it may mean putting illiterate persons at a disadvantage in securing loans, as a money-lender would not always find it convenient to attend at a registration office. In the case of promissory notes payable on demand and hundis, a clear thumb-impression, if made obligatory, would suffice.

82. No. Such suits are in the nature of a gamble and any amount paid for court-fees is merely a stake, and will be readily paid.

MAUNG THA DIN GYI, Officiating Chief Judge of the Small Cause Court, Rangoon, called and examined on Friday, the 2nd May 1924.

Sir T. Desikachari.—*Q.* You are the officiating Chief Judge of the Small Cause Court at Rangoon?

A. Yes, I was appointed only on the 26th of March last.

Q. So you have not been there for a long time?

A. I actually sat on the Bench on that date. I practised for eleven and a half years.

Q. Were you practising in Rangoon?

A. Yes.

Q. In which Courts have you been practising?

A. I have been practising on the Appellate side but my practice was chiefly in the Small Cause Court.

Q. Therefore you must be in a position to give us some information about the Small Cause Courts?

A. So far as the Appellate side is concerned, I think I will be able to give you information to the best of my ability.

Q. Have you any idea as to the provisions with regard to appeals? With regard to appeals, I think, under the Rangoon Small Cause Court Act decisions in cases above the value of Rs. 1,000 are appealed against?

A. Yes.

Q. Are there many appeals filed in the Chief Court? Do you know how those provisions are working?

A. I dare say there are good many appeals.

Q. Is it a fact that almost in every contested case over Rs. 1,000, the decision is appealed against?

A. Yes.

Q. Do you know what the number is of appeals filed in the High Court?

A. I have not got statistics with me and I am sorry I am not in a position to give the exact number.

Q. Do you know how this provision is working?

A. So far, it is working very satisfactorily.

Q. Do people resort freely to that provision and take appeals to the High Court against decisions of the Small Cause Court over the value of Rs. 1,000?

A. I am not in a position to give any answer to this question.

Q. I also see that the Small Cause Court can try suits to the value of more than Rs. 2,000 under section 15 of the Small Cause Court Act?

A. But with the consent of both the parties.

Q. How does that provision work? Are there many suits of that kind tried in the Small Cause Court?

A. Not to my knowledge.

Q. So you are not in a position to tell us whether that system is popular or not?

A. I am sorry I am not in a position to do so.

Q. Under the Small Cause Court Act, the jurisdiction of the Registrar is given as Rs. 50. Does he exercise that jurisdiction in trying cases?

A. No. The Registrar does not try cases. The third Judge tries cases up to the value of Rs. 100, the second Judge tries cases between Rs. 100 and Rs. 500 and above Rs. 500 they are tried by the Chief Judge.

Q. Why does he not try cases according to the Act?

A. He has got other work to do.

Q. Do you mean to say that he cannot find time to do this work?

A. For the present he cannot find time to try cases, but as the number of cases is increasing he will, perhaps have to try some cases. I have got statistics with me. Last year we had 2,864 suits up to the first of May and this year we had 3,419; so there is an excess of about 600 cases. All the cases go before the Registrar in the first instance but he sends them to the first or the second Judge for trial.

Q. But he does not try cases himself?

A. He takes up those cases only in which the parties confess judgments.

Q. With reference to the Small Cause Court decisions what do you think of the advisability of having an appellate bench to hear appeals from decisions of a single Small Cause Court Judge?

A. We have not got a sufficient number of Judges. There are only three Judges.

Q. Is that the only reason? Otherwise you think the system could work quite satisfactorily? Why should not these cases be decided by a Bench of Small Cause Court Judges, instead of being taken up to the High Court?

A. I have not considered that point.

Q. With regard to applications under section 17 of the Small Cause Court Act I suppose they are also taken into consideration in working out the average duration?

A. Yes.

Q. Do many cases come up under section 17?

A. Last year there were about 9,924 cases in all and about 790 cases were those relating to ejectment.

Q. What do you think of the Small Cause Court being asked to try suits up to the value of Rs. 3,000? They can now try cases up to Rs. 2,000 under the Act. Why should not they be empowered to try cases up to the value of Rs. 3,000 or even Rs. 4,000?

A. The Small Cause Court, as at present constituted, cannot take up that work. We shall have to see whether there are many cases between Rs. 2,000 and Rs. 3,000. I do not know whether there are many cases between Rs. 2,000 and Rs. 3,000. Unless I get statistics I am not able to give any definite opinion.

Q. Apart from statistics do you see any objection to the Rangoon Small Cause Court trying cases up to the value of Rs. 3,000. The limit of Rs. 2,000 was fixed in 1887 and having regard to the value of the rupee now why should their jurisdiction be not enhanced to Rs. 3,000?

A. Unless the number of Judges is increased I do not think their jurisdiction should be raised.

Q. What is the average duration of suits in your Court? I see from the report of 1922 that the average duration in contested cases is 70 days and in uncontested cases it is 45 days. I do not think that is too much.

A. No.

Q. Do you think that the Judges can do more work than they are doing?

A. It depends upon the number of cases.

Q. So you are not in a position to give an answer?

A. No.

Q. How are costs given in the Small Cause Court? Are they given according to the value of suits? I mean pleaders' fees.

A. Yes, except in miscellaneous cases. There are three grades of pleaders, first grade, second grade and third grade. They are, I think, paid Rs. 17, Rs. 10 and Rs. 5 in miscellaneous cases.

Q. Are they all paid according to the value of suits except in miscellaneous cases?

A. Yes, except in miscellaneous cases.

Q. With regard to the service of processes it is stated here that there is great delay.

A. Yes. That is the opinion given by my predecessor.

Q. Have you any information as to why there is such a great delay?

A. The delay is due to late payment of fees by the parties concerned and also by the advocates' clerks.

Q. Why do the parties not pay the process fees in time? I understand from the rules that it is the bailiff that generally receives the process fee. Is it so?

A. The head clerk's department receives it and not the bailiff.

Q. What does the bailiff do?

A. He controls the process-servers.

Mr. Dunkley.—I think the fee is paid in the form of stamps.

A. Yes.

Sir T. Desikachari.—*Q*. Then, what is the trouble?

A. The parties do not choose to pay the process fee within the proper time. For instance, this morning I came across three or four cases in which the process fee was ordered to be paid before the holidays but it was paid only this morning.

Q. Do they not file a memorandum with the process fee along with the plaint at the time of filing?

A. They have got to pay the process fee along with the plaint. If it is not paid within 48 hours, according to the rules the plaint will be rejected. But in a case where the defendant is not served and they ask for fresh notice, if the fee is not paid, the court has got no power to dismiss the suit.

Q. If the plaintiff does not do the thing that he is asked to do, has not the Court power to deal with the plaintiff?

A. So far as I can see in the Manual, I have got no power to dismiss the suit for non-payment of fresh process fee. They come and pay the fees at a very late stage.

Q. Do you fix a time within which the fresh process fee should be paid?

A. In the diary we simply say that the fresh notice is returnable, say, within a week and the party is expected to pay it on the following day.

Q. How long does it take on an average to have a process served on the defendant in your Court?

A. I have got no statistics.

Q. You say that inattention to the service of the processes is the primary cause of much delay.

A. I agree with the views put down by my predecessor. At the same time I wish to suggest that if you could introduce a system like that prevailing in the telegraph department, the result will be better. I understand that in the telegraph department on each telegram the peon is paid two pice. If you can adopt that system in the case of processes served effectively it might improve.

Q. As far as I understand the process-servers are asked to serve 2,000 processes each in a year. Is that so?

A. I have got 20 process-servers. Last year 42,870 processes were served in our Court and 9,505 from other districts.

Q. That works much more than the average given in your rules.

A. Yes, more than that.

Q. Apparently there does not appear to be very much fault on the part of the process-servers.

A. But there has been a lot of complaint against the process-serving department.

Chairman.—*Q.* You were giving some figures about the number of processes. Are those processes personally served or simply processes sent out for service?

A. They are the number of processes received for service during the year 1923.

Q. How many of them were effectually served in fact?

A. I have not got the statistics for that.

Sir T. Desikachari.—*Q.* You are not in a position, therefore, to say whether there has been effective service or what proportion was effectively served out of that lot?

A. I am not in a position to say.

Q. I suppose that you, as Chief Judge, are taking up suits of value up to Rs. 2,000.

A. I am taking up suits from Rs. 500 up to Rs. 2,000.

Q. How many suits come up to you each day, leaving aside miscellaneous work?

A. Eight or nine contested cases come up each day. I don't take up uncontested cases; they are heard by the third Judge. Then 15 to 20 cases for orders come up and then cases for enquiry and arguments as well.

Q. Let me take up the cases for orders. What sort of cases are they?

A. Those cases are sent to me by the Registrar. They are for the filing of written statement, for issue of commission and for amendment of plaints.

Q. Those cases are taken up first, I suppose.

A. Yes. They don't take more than an hour.

Q. Let me take the cases with reference to the filing of written statements. When the Registrar sends the case to you for the reception of a written statement, what do you do?

A. Sometimes they file written statements and sometimes they ask for time.

Q. If they ask for time, you grant it.

A. Yes.

Q. If they file written statement, what do you do?

A. We put it on for hearing and give another date.

Q. In that way those suits are disposed of.

A. Yes.

Q. With reference to suits in which commissions are applied for, you will have to pass an order granting or refusing the application.

A. Yes.

Q. Then again, with regard to the third set of suits you pass an order in favour of one party or the other.

A. Yes.

Q. You say that all these cases will occupy not more than an hour in the morning.

A. Yes. That is the average.

Q. Then you take up the contested suits.

A. First of all I take up contested miscellaneous suits, *viz.*, attachment of immovables and enquiry cases.

Q. What are the enquiry cases?

A. For instance, the satisfaction of a decree, ejectment suits and then questions relating to sub-tenancy, *e.g.*, a petitioner comes and says that he is not a tenant.

Q. We will take first of all these sets of cases.

A. First of all argument cases on legal points. I get one or two cases a day of this nature.

Q. Argument on questions of jurisdiction?

A. On all points.

Q. And they are sent to you by the third Judge?

A. They are sent to me by the Registrar.

Q. You have one or two cases in which there are questions of law. What are these suits? Are they suits set down for final hearing or those in which preliminary points regarding the maintainability of the suits are taken? I ask you this in order to know whether other suits ready for hearing are delayed or not.

A. They are suits in which legal points on the written statement or the plaint—preliminary points—have to be decided.

Q. And such suits as soon as the preliminary points are decided are either dismissed or set down for hearing on another date. What about enquiry cases? In these cases there is not much of an enquiry.

A. So far as I know last year there were only four cases of this kind.

Q. And how long does this work take before you come to the regular work?

A. Sometimes it does not take any time and sometimes it takes much time. Removal of attachment sometimes takes two hours.

Q. And after that you come to the regular work?

A. Yes.

Q. And the regular work will be contested cases posted for the day: how many of these cases are so posted?

A. Average eight or nine.

Q. And in all these cases witnesses would be ready. Are you in a position to get through all the cases?

A. No.

Q. How many cases do you get through?

A. During the last two weeks I could do four cases and others had to be adjourned.

Q. And you give a long date?

A. It depends upon the nature of the case. Sometimes a suit for damages is given about a month.

Q. How many times does a suit come up like this before you are in a position to dispose of it? Are suits adjourned more than once before they are disposed of finally?

A. Some of them have to be.

Q. Is it not possible to have the posting arranged in such a manner as to prevent the witnesses and the parties having to come and wait?

A. It is not possible to make such an arrangement.

Q. Why?

A. Because the first case may probably take up two hours.

Q. Why do you post more cases than you can dispose of?

A. Out of eight or nine cases, probably the parties in some of them may apply for adjournment on the ground that they are not ready and I have to make allowance for that.

Q. And in order that you may have a full day's work you post a number of cases?

A. That has been adopted in this Court.

Q. I think you have not yet sufficient experience of the work of your Court in order to see as to what arrangements would be best to prevent this?

A. I looked up the old cause list and I am following the old procedure.

Q. Does the same thing happen in the case of the second Judge. He takes up cases between hundred and five hundred.

A. He gets ten to fifteen cases.

Q. And they have also to be adjourned two or three times before they can be taken up?

A. In some cases.

Q. You are not in a position to say whether anything can be done to prevent this?

A. No.

Q. Who sells property in execution of a decree?

A. The bailiff.

Q. I am told the process-server also sells it.

A. No.

Q. Are you in a position to say whether in execution of decrees money is realised easily?

A. I have not got the figures. Last year about eight thousand and fifty-four execution proceedings were taken out.

Q. And in how many cases were the amounts realised?

A. I have not got the statistics.

Q. Nor are you in a position to know how many cases there were in which satisfaction was recorded in Court?

A. I have not worked it out.

Q. What is your idea as a legal practitioner? Are decretal amounts realised easily in execution of Small Cause Court decrees?

A. As a lawyer I did not look into the execution proceedings. I simply signed the execution petition.

Q. You must know whether money was realised eventually?

A. Generally the practice is that it is done by the head clerk.

Q. That is, your clerk manages the whole thing?

A. That is the practice.

Q. You have no idea as to whether any money is realised in execution of Small Cause Court decrees?

A. No, I have not.

Q. You were practising in the Chief Court and you were also practising in the High Court. What do you think of taking away all suits valued at less than rupees one thousand and entrusting them to a separate Court like a City Civil Court? I see a large number of very small cases are tried in the High Court—I mean to say suits of pecuniary value of less than one thousand rupees.

A. I have already told you that under the circumstances in which the Courts are at present constituted nothing can be done.

Q. I am referring to a separate Court to try all suits, over which the Small Cause Court has no jurisdiction, and which are less than one thousand rupees in value.

A. That depends upon whether the public wants it or not.

Q. I should like to have your valuable opinion in the matter. I think public servants are also members of the public.

A. I think this is a matter which should be decided by the Government.

Q. You are not in a position to answer this question?

A. No.

Q. Will you just see section 14 of the Rangoon Small Cause Court Act? Are you in a position to say that any of the classes of suits which are excluded from the jurisdiction of the Small Cause Court could be conveniently brought under its jurisdiction? I think there are some classes of suits which can be quite as well disposed of by the Rangoon Small Cause Court Judge himself if their value is below Rs. 2,000.

A. Yes. If the public and the Government want it.

Q. But I want your personal opinion if you could kindly give it to us.

A. Then it means that the Small Cause Court shall have to try cases relating to immovable property.

Q. That is what I mean to say. I have ascertained from other witnesses examined by this committee that some suits relating to immovable property could well be tried by the Small Cause Court Judge. For instance, take the case of a simple mortgage for recovery of, say, Rs. 150; now why should this case go to the High Court and not be disposed of by the Small Cause Court itself? I think the Small Cause Court Judge can very easily dispose of these cases.

A. There can be no objection to it but, as I have already pointed out in the earlier part of my examination, the Court as at present constituted cannot take up this work.

Q. But supposing the number of Judges is increased, do you think that these cases could be disposed of on the small cause side?

A. There can be no objection.

Q. In your predecessor's statement I have noted two points and the first is with regard to delay caused by the translation of vernacular documents. I do not exactly follow what he means by that?

A. Vernacular documents have got to be translated in the translation department of the High Court and that department does this work for all Courts in Rangoon.

Q. Do you mean to say that there is only one establishment for doing this work even including Mr. Dunkley's Court?

A. I think so.

Q. What is the language of the Court in Rangoon? Is it Burmese?

A. The second Judge takes up cases up to Rs. 500 and when the parties are Burmese in these cases there is no necessity for the documents being translated. Documents have to be translated in suits of the value of more than Rs. 500.

Q. Are there many languages here?

A. There are Chinese and Chetty Books in Tamil.

Q. But why should the documents be translated at all?

A. If the Presiding Judge is not a Burmese then he must have the documents translated. When the parties are Burmese they can file their documents, *i.e.*, plaint and written statement in their own language, but if the case is for more than Rs. 500 the documents must be translated. The language of the Court is English.

Q. So these documents are translated by the central translation department. Do you think that there is a great delay in having documents translated?

A. Yes.

Q. Does that happen in a large number of cases?

A. It depends upon the bulk of documents that have to be translated.

Q. What is the sort of delay?

A. I think the procedure adopted in translation is that they translate documents according to the serial number. That is my impression.

Q. I see that the duration of contested suits is not more than 70 days and in uncontested suits it is not more than 45 days. Is the delay that is caused within 70 days due to having the documents translated in the central establishment?

A. The delay is not due to this particular reason. It is due as pointed out by my predecessor to four or five reasons.

Q. But surely this is one of the grounds urged?

A. Certain documents are not in possession of the parties, but they are in possession of witnesses and after having been received by them they have to be sent to the central establishment for translation. This may take a week or a fortnight.

Q. Do you think that the trial of suits is held up on that account?

A. The Judge cannot, after recording evidence, pass judgment until he has received the documents back from the central establishment.

Q. What remedy would you suggest for this delay? Do you want a separate translation department for the Small Cause Court?

A. No, it is not necessary so far as the Small Cause Court is concerned. If the High Court translation department is strengthened that will improve matters.

Q. Do you think that the delay caused at present is due to the fact that the central establishment is undermanned? Do you want more translators to be appointed? Is that your impression?

A. Yes.

Q. You do not want a separate translation department for the Small Cause Court to speed up matters?

A. It will be rather expensive to have a translation department of our own because all the interpreters of my Court are attached to the High Court translation department.

Q. There is another cause of delay which is mentioned in the statement; that is, the delay in the execution of commissions which are issued to India and Ceylon. What sort of commissions are they?

A. They are for the examination of parties and the examination of witnesses.

Q. I think the examination of witnesses in India on commission is in connection with the suits of Nattukottai Chetties?

A. Yes, mostly.

Q, You mean witnesses residing in Madura and Ramnad Districts?

A. In India. Sometimes they apply for two or three commissions. Yesterday I came across a case in which the parties applied for commission for the fourth time.

Q. Is it not the rule that as soon as the case comes on for hearing the parties should apply for the issue of a commission to examine their witnesses?

A. The trouble is that just before the hearing date the parties come and say that the witness has left for India.

Q. Have you not got a rule that all applications for the issue of commissions must be presented at as early an opportunity as possible?

A. I don't think we have got a rule of that kind.

Q. This is the Madras rule. "If an application for the issue of a commission to examine a witness or with respect to any other matter mentioned in Rule 61, is made subsequently to the first hearing, and an adjournment of the final hearing is prayed, the adjournment shall not be allowed, unless it is made to appear to the Court that the application could not, or ought not to have been made at the first hearing." Would not a rule like that be useful here to prevent belated applications for the issue of commissions?

A. Yes.

Q. As it is, you think that commissions are applied for at the last stage of the numerous hearings that a suit goes through.

A. Yes. That sort of thing happens very frequently.

Q. Apparently at the first hearing the legal practitioner has no proper instructions from his clients. The client sleeps over the matter and the witness is somewhere in the chettynad and when the case comes on for hearing for the fourth time he says the witness is not here.

A. Yes.

Q. You think that it would be a good thing to have a rule like the one which I just now read out to you?

A. Yes.

Q. Mr. Dunkley says that there is some executive order about that here. Has it not come to your notice?

A. No.

Q. With regard to the return of a commission your predecessor says that there is some trouble. Have you any idea?

A. It is not returned within proper time. It has got to be extended from month to month.

Q. Have you any idea as to what reasons are given for that? Is it because the parties do not appear before the commissioner or is it because the witnesses do not appear or is it because the Court executing has not got time to execute the commission?

A. During my short experience I have not come across any case of this kind.

Q. Are applications for payment of the decretal amount in instalments made by the judgment-debtors after the passing of the decree?

A. Those cases are referred to the third Judge and not to the Chief Judge.

Q. You are not in a position to know how he deals with them?

A. No.

Q. Now are you in a position to tell us exactly as to how the judgment-debtor comes up to get the decretal amount made payable in instalments?

A. I am not in a position to say.

Q. In connection with execution of decrees generally, who does the work?

A. The applications go to the chief clerk and he takes the cases on to the Judges concerned.

Q. Does he pass any orders himself? I see from the duties of the various officers that they pass some orders and that only in some cases they take up the case before the Judges. Have you any idea as to what is being done exactly as soon as an application is filed praying for attachment of property?

A. I don't deal with such cases.

Q. Have you any idea as to whether there is any branch of the Buddhist Law which can be codified in Burma? Have you got experience of cases relating to adoption and inheritance which come up before courts in which oral evidence has to be adduced?

A. I don't quite follow.

Q. Is there any department of Buddhist Law which could be codified in order to remove any uncertainty in it and to prevent the waste of time in hearing oral evidence?

A. I don't think that will help the decision of the case.

Q. There will be less number of witnesses examined.

A. So far as Buddhist Law is concerned we have got digests.

Q. So far as that is concerned, you think there is very little uncertainty.

A. I mean we have got a digest which deals with all the Buddhist Law.

Q. I was just reading a book by a gentleman who has been appointed a High Court Judge. I see quite a large number of points in which there are decisions on customary law, inheritance, adoption, succession and matrimonial questions. I wish to know whether it is possible to have any codification of Burmese Buddhist Law in any or all of these departments?

A. I do not think the Burmese public want it.

Q. They do not like it?

A. So far as I know there is no agitation here in the matter.

Q. It is not the question of agitation but it is whether it is necessary or not?

A. So far as the Burmese Buddhist Law is concerned I do not think it is necessary for the time being.

Q. You look to our Question No. 76. Do you think it will be possible to introduce a rule that all partitions of immovable property should be evidenced by instruments and that such instruments should be registered? I put this question to you in order to know whether there is any possibility of reducing the oral evidence adduced in Courts to prove partitions. If there is a registered document the Court could arrive at a decision sooner and with greater certainty than otherwise.

A. This would not reduce the duration of a case. The attesting witnesses will have to be called. The document by itself cannot be admitted and the attesting witness will have to be called.

Q. To prevent examining a large number of witnesses to prove the fact of a partition—that is what I mean, have you considered that?

A. I think that will be acceptable.

Q. What about a rule that all adoptions must be evidenced by written instruments and that such instruments should be registered?

A. That might conflict with our Burmese Buddhist Law.

Q. It is not the question of conflict, it is a question of change in the rule.

A. I do not think this will be accepted by the Burmese people.

Q. I am putting you a question having regard to your practice at the Bar. What do you think of introducing a rule which would qualify Article 182 of the Second Schedule of the Limitation Act, that is, with reference to steps in aid of execution? Why should you have an application every three years in order to keep the decree alive? Why should not a man, if he had not had satisfaction of his decree, come up once for all when he finds that he can recover his money?

A. I would not like to have any change personally.

Q. What is the benefit to a person who comes up every year and goes away after filing his application without realising any money?

A. He should take some sort of step.

Q. This is the result of decisions under Article 182. Why should not a man be allowed to come once for all and execute his decree when he can get his money?

A. I do not like to commit myself.

Q. With regard to section 48 of the Civil Procedure Code the utmost period within which a petition for execution could be filed is 12 years. Do you think it can safely be curtailed to six years; why keep the decree hanging for 12 years?

A. Well, to give a chance to the decree-holder to realise his amount.

Q. You want to allow a decree-holder to have a chance of realising the amount. That argument will apply if you give him 18 years. Would it not?

A. 12 years are quite sufficient.

Chairman.—About instalment orders in execution, I find that under the Civil Procedure Code an instalment order can only be made at the time the decree is passed or afterwards with the consent of the plaintiff. . . . .

(*Mr. Chari*.—I forgot to tell you that this has been changed by a rule. We have taken out the words " by the consent of the decree-holder.")

In the Presidency Town Small Cause Court Act there is a special section which enables the Small Cause Court to make such an order without the consent of the plaintiff after the decree and I was going to ask you whether in fact there is anything about it in the Burma Small Cause Court Act and whether in fact such orders are made after the decree. I understand that for the purpose of your Court the Code has been altered by rules made by the High Court.

There is one other thing and that is this. Under section 25 of the Provincial Small Cause Court Act, the High Court can send for records and interfere on all questions either on fact or on law as it thinks fit, that is the power of revision under that section is much wider than that under section 115 of the Code. So your Small Cause Court for Rangoon is subject to much greater revision by the High Court than the Presidency Small Cause Court in Calcutta.

A. That is so, but if this section is read with section 115 of the Civil Procedure Code it will be very different.

Q. That is section 25 is much wider. You have, therefore, much greater control than the High Court of Calcutta has over the Presidency Small Cause Court, Calcutta, because the Presidency Small Cause Court, Calcutta, is only subject to section 115 of the Code.

A. This provision has come up in force from 25th October and I do not know how many cases have come up for revision.

Q. As regards execution, under your Act, there is a provision about the distress warrant. A bailiff is prohibited from breaking open the out-door of a dwelling-house though he is allowed to force open any stable, out-house or to break open the door of any room. But there seems to be no provision in such cases to break open the outer door of the dwelling-house of the defendant—have you ever had any difficulty in that matter?

A. No.

Mr. Chari.—*Q.* How long does it take to dispose of an uncontested case? What is the procedure?

A. When the defendant is served, the case comes up before the Registrar and he then sends it to the third Judge for an *ex parte* order.

Q. What do you think is the average interval between the service of summons and the case coming up before the Court for disposal? Do you not think it will come to five days? Will it not be so?

A. It may take more than five days.

Q. At the most seven days—it cannot be more than that. As an average you can take five days because there are some cases which take fifteen days and there are others which take only two days. So do you think that the average of five days will cover the duration between the service and the disposal of the case?

A. I will put it down as from five to seven days.

Q. So if you deduct these seven days from the average duration of 45 days for uncontested cases, it will mean that 38 days are taken in serving the process?

A. Yes.

Q. That is a matter of arithmetic. Do you not think that is too long?

A. But that duration is not for this year; it is from the year 1915 to 1923. In former days when there were only two Judges it used to take from seven to ten days.

Q. But that does not matter? Even then it comes to 30 days and do you not think it is too much?

A. It depends upon the care taken by the plaintiff and the payment of fees and so on. Everything has to be taken into consideration.

Q. Have you considered the desirability of applying the summary procedure section to the Small Cause Court in Rangoon—possibly you have not?

A. No.

Mr. B. K. BASU, Secretary, Pegu Bar Association, called and examined on Tuesday, the 6th May 1924.

(*No written statement received.*)

Mr. Chari.—*Q.* You come from the Pegu Bar Association?

A. Yes.

Q. You are the Secretary of that Bar Association?

A. Yes.

Q. How many members are there in your Bar Association?

A. There are 30 members.

Q. How many non-members practise?

A. Three.

Q. Out of 33 practitioners, 30 belong to your Association?

A. Yes.

Q. Do you practise in all the courts there? How many courts are there in Pegu?

A. District and Sessions Judge, Additional District and Sessions Judge. Sub-Divisional Judge and Township Judge.

Q. How many criminal courts are there?

A. Sub-Divisional Magistrate, Township Magistrate, Headquarters Magistrate, First Additional Magistrate, Special Power Magistrate and Second Special Power Magistrate.

Q. Do you practise in all these 9 courts?

A. My practice is confined mostly to the civil side.

Q. Is it possible for the practitioners to practise only in any particular court in the district towns?

A. No.

Q. There is not enough work.

A. No.

Q. The result is that the senior man has to take big cases in almost all the courts.

A. Yes.

Q. Does it in any way conduce to delay? Does it not happen that a Judge has to wait for a senior member who is engaged in another court?

A. Very seldom. We take dates according to our own convenience. When we find that there is a case fixed before a certain District Judge on a certain day, we don't take up cases in other courts on that day.

Mr. Dunkley.—*Q.* That means you choose your own dates.

A. We request the courts to give a date convenient to us.

Q. The courts always consult you?

A. Yes.

Mr. Chari.—*Q.* What do you think is the fair average time to bring a defendant before court? I mean for serving the process on him in your district. In the Sub-Divisional Courts summonses have to be served in the outlying villages. What do you think is the fair average time to bring the defendant before court?

A. Now-a-days the conditions are a little improved. We find that 15 or 20 days time is enough to bring the defendants from distant places.

Q. Is he brought within that time generally?

A. Yes.

Q. So you have no complaints about the service of processes.

A. We have.

Q. What is your complaint if the defendant is brought so quickly before the court?

A. Sometimes we find the defendants are not served. It is not due to want of time but is due to the laxity of the process-server.

Q. Do you think the process-server is bribed by the defendant?

A. Yes.

Q. That is only occasional, I suppose.

A. Yes, a few cases only.

Q. On the average you find that the summons is served on the defendant.

A. The conditions have recently much improved.

Q. In all the courts?

A. I find the processes of the higher courts are more diligently served than those of the lower courts.

Q. To what do you attribute it—effective control of the process-servers?

A. They are more afraid of the District Judge than of the Township Judge.

Q. So, you think it is due to the fear of the District Judge that his processes are served much more quickly than the processes of other courts.

A. Yes.

Q. If the defendant is brought to court does he file his written statement at once?

A. Yes, in most of the cases.

Q. What do you think is the average time taken to dispose of contested suits?

A. It depends upon the number of witnesses. Issues are generally framed on the date on which the written statement is filed and then a date is given for hearing. That is always within a month so far as Sub-Divisional and Township Courts are concerned; and in District Courts a little more time is given. On the date of hearing if the witnesses are ready, the cases are heard.

Q. Are cases generally disposed of on the date fixed for first hearing?

A. Yes, if the witnesses are ready and if their number is not large.

Q. Generally what percentage of cases, do you think, are disposed of on the first day of the hearing?

A. I think it will be 30 per cent.

Q. 70 per cent. go to some other day?

A. Yes, after part-hearing or without hearing.

Q. How many postponements are generally made before a case is finally disposed of?

A. That depends upon the circumstances of each case. If the witnesses are ready on the first hearing and if the Judge is free on that day, he may finish on that day.

Q. 192 days is said to be the average duration for contested suits in a District Court. Deducting a month for service of process on the defendant, it comes to about 5 months. Do you think that is a proper time or do you think that is too long a pendency?

A. Usually, it is rather a long time. The duration depends upon the cases in which commissions are issued. Those cases in which commissions are not issued are quickly disposed of.

Q. When the written statement is filed, who settles the issues? Does the Judge settle himself or does the advocate suggest the issues?

A. If the pleadings are lengthy and complicated the advocates suggest the issues and if both parties agree they are accepted by the court.

Q I think they are accepted without any further scrutiny of the pleadings by the Judge. Is that satisfactory?

A. Yes, generally satisfactory.

Q. Are the parties examined on the date of settlement of issues?

A. Very seldom.

Q. Does he at least ask the advocates to explain the pleadings?

A. No, that is very seldom done.

Q. Do you open cases?

A. No.

Q. How do you open a case, do you read the pleadings?

A. Nothing whatsoever.

Q. You jump right into the case when the first witness is in the box.

A. Yes.

Q. Does the judge come prepared? Does he read the pleadings in his Chamber?

A. I doubt very much.

Q. How do you expect him to have an effective control of the case? If he knows no more about the case it is very dangerous.

A. After hearing some witnesses he comes to know what the case is.

Q. Is objection to the irrelevancy of questions taken in the course of examination of witnesses?

A. Sometimes.

Q. Is he able to check the irrelevant questions without any knowledge of the case?

A. The questions of relevancy or irrelevancy generally occur in the district courts. In the Sub-Divisional Court they do not have much idea about the relevancy or irrelevancy of questions. I know a case in which the opposite parties were putting irrelevant questions and after waiting for some time I mentioned to the court that the questions were absolutely irrelevant and at that time the case had gone on for three or four months. The judge told me 'I have not understood the case.' I had to sit down disgusted.

Q. You know the procedure in the Civil Procedure Code relating to discovery and interrogatories. Do you make much use of that?

A. Generally not.

Q. Do you ask for affidavit of documents?

A. In the district courts when lot of documents are involved we do.

Q. In the lower courts?

A. I have never come across that.

Q. When a case is taken up for trial, say there are twenty witnesses, and he has fixed two days. The judge goes on with the case and he finishes eight witnesses and twelve witnesses are in hand. Does he go on with the case on the third day?

A. Sometimes the judge insists on going on. Generally when the judge finds that there is a long list of witnesses he fixes five days for hearing and after that hearing he fixes another case.

Q. He consults the advocates, before he allots the number of days, as to how many witnesses are likely to be called.

A. Yes.

Q. Supposing he has exhausted the number of days but he has not exhausted the number of witnesses?

A. He gives another date.

Q. Does he not go on?

A. He will be very much inconvenienced.

Q. And then you think it is the fault of the advocates that they are not prepared to go on for any longer number of days than those originally allotted?

A. Sometimes on the next day another case is fixed and the judge then thinks that he has got other witnesses waiting.

Q. Is it the question of a judge having sufficient work to do? You mean to say that the advocates never insist upon it.

A. If the case is very long it is inconvenient to the advocates.

Q. If the Bar is given to understand that the case must go on from day to day when all the witnesses are present then they will be prepared.

A. In that case they will have to manage. Recently our District Judge had to dispose of one case and he did no other work.

Q. Before a case is taken up, are preliminary points disposed of?

A. If preliminary objections are taken.

Q. Which go to the root of the case.

A. Yes.

Q. And after the case is closed are judgments given at once by the judge?

A. No.

Q. How long does he take? Are they unduly delayed?

A. In the hands of some judges there is delay; in the hands of others there is no delay.

Q. Is there more delay than is necessary?

A. In civil courts there is more delay than is necessary.

Q. What is the delay due to? Why should not a judge give judgment when the whole case is fresh in his mind?

A. After the hearing is closed the judge finds it difficult to understand the whole case, and sometimes we are called to re-argue the matter.

Q. Does it happen that on account of interruption of hearing the judge and possibly the advocates forget all that the witnesses have said?

A. As to the evidence we can safely leave it in the hands of the judge because he can read it.

Q. Does he remember the names of the witnesses that he examined two or three months ago?

A. It is very hard to remember.

Q. Do you not think that this piecemeal hearing of the case delays the judgment? Do you not think that getting rid of a large number of cases is an unsatisfactory procedure?

A. When there is another case he does not care much for the arguments.

Q. You mean to say he cuts the counsel short?

A. He tries to do that.

Q. Now, why is it so? There is a test of efficiency for these judges.

A. So far as the sub-judges are concerned they are generally inefficient.

Q. The High Court has prescribed a test that they have to get rid of a certain number of cases within a certain time, before they are considered efficient. Have you heard that?

A. I think the more the judge disposes of cases the more there is a chance for him for promotion.

Q. Do you think it is a good test of a judge?

A. No.

Q. And this is the reason why they try to get rid of many cases?

A. Yes.

Q. Have you had any difficulty in the execution of decrees?

A. Yes.

Q. What kind of difficulties do you have?

A. We have to issue notices after notices and even substituted notices are issued.

Q. Unnecessary delay is caused by the issue of too many notices. Would you approve of the suggestion made in our questionnaire that one notice should be issued in the beginning of the execution proceedings and the judgment-debtor should be asked to attend on all subsequent hearings without any further notice?

A. Supposing in a mortgage suit we get a preliminary decree. After that we have to issue a notice and then there is final decree and the court proclaims the property to be sold and then another notice has to be issued.

Q. Would it be desirable in a case, when the first execution application is filed, to issue a notice to the judgment-debtor that such an application has been filed and that he should present himself on such and such dates?

A. In money decrees I would not suggest that that should be made compulsory because that will give chance to the judgment-debtor to avoid notice.

Q. That is the case where you apply for arrest of the judgment-debtor?

A. Yes.

Q. As regards inconvenience you just now referred to in mortgage decrees, do you think we can advantageously alter the form of the decree so as to include all the reliefs in it instead of first asking the man to pay the money within six months and then expecting the judgment-creditor to apply for sale if it is not paid up, and so on? Do you not think we could have one form of decree which would include all reliefs?

A. If such a form could be properly drawn up I would like to have it.

Q. Is there anything else which causes inconvenience in the execution of decrees?

A. There is the negligence of the process-server. I know of instances in which even village headmen could not be arrested even after four or five warrants were issued. The men were known to everybody, but still the process-servers would come back and say that the men could not be seen.

Q. Is that all about execution?

A. Yes.

Q. Has there been much difficulty in bringing legal representatives on the record?

A. In the case of Indians who die here we find much difficulty.

Q. Have you any suggestions to make to expedite matters in that respect?

A. The definition of legal representatives may be changed.

Q. Has there been any difficulty felt in practice on account of the rule that all the legal representatives should be brought on the record? Do you not think that it will be better to bring one or two legal representatives on the record?

A. That may cause hardship. I think simultaneous processes should be encouraged, *i.e.*, against person and property.

Q. Will you abolish rule 21 of Order 21?

A. That gives discretion, but the judges here do not exercise their discretion in these matters. In one case the *judge* told me that he could not do it.

Q. Now we will come to commissions. Is there much delay in cases in which commissions are issued to India? Do you think sufficient time is usually fixed for the return of commissions?

A. I have got experience of Madras only and I think in that case only one month's time is given.

Q. Do you think that is sufficient time?

A. I do not know how much time it takes to cover the distance and at the same time I do not know the distance. It all depends upon circumstances.

Q. Do you think one month's time is sufficient?

A. I do not think so.

Q. Are commissions executed at the very first attempt?

A. In some cases they are.

Q. But in majority of cases?

A. No.

Q. Do they come back unexecuted or do they apply for extension of time?

A. They apply for extension of time.

Q. What would you suggest? Do you think that judges should be more strict in the enforcement of the rules about not giving a second chance to the man to execute his commission?

A. Hard and fast rules may cause more hardship because witnesses who have to appear may be living at some distance and the man has to make arrangements for getting them from there.

Q. What do you think is the percentage of cases in which commissions are applied for?

A. Very low.

Q. I think it is in those cases only in which Chettis or Indians are plaintiffs?

A. Yes

Chairman.—*Q.* Do you not think that soft and loose rules also cause hardship?

A. I mean to say that the judge should take into consideration the circumstances which do not allow the commission to be executed at the very first attempt. The judge should not simply say "I am not going to grant any extension of time." If there are reasonable grounds for the failure to execute the commission, the judge should take them into consideration and grant an extension if he considers them reasonable. I do not think any hard and fast rule in this connection would improve matters. If the man can satisfy the court that there was some reason for which he could not get the commission executed, the court should be kind enough to grant an extension.

Mr. Chari.—*Q.* Do you think that judges can be more strict in this matter?

A. Now they are very strict. They will send telegrams at once saying that commission papers should be sent back. They ask parties to pay the expenses of those telegrams.

Q. Have you had many claim petitions in the execution of decrees?

A. Yes.

Q. Do you think they are more than what they ought to be?

A. I think so.

Q. Are there many frivolous applications?

A. About 30 per cent.

Q. And does it take long to dispose of these claim applications? I think they are tried in the same way as regular suits are tried?

A. Yes. They do not generally record the whole of the evidence but deal with them in a summary manner.

Q. Do you agree to the suggestion that these claim petitions should be disposed of on affidavits?

A. Until the other party asks for cross-examination of the witnesses.

Q. What is the average time taken to dispose of claim petitions? Is it longer than it ought to be?

A. I do not think it is longer.

Q. And after the claim is allowed or disallowed, a regular suit is filed and the whole of the execution is hung up till the regular suit is disposed of. Do you not think that that causes great loss to the judgment-creditor?

A. Yes, it does.

Q. Can you suggest some means by which we can get rid of this unsatisfactory state of things?

A. I would suggest that stay of execution should not take place. The execution may continue and should not be stayed.

Chairman.—*Q*. In how many cases do you find that the suits to set aside orders in claim proceedings are successful?

A. A great many are successful.

Q. Don't you think that we get into more difficulties by staying execution? Won't justice be done by carrying on execution?

A. Taking the cases in which the claimants become successful, it will be very difficult for them to get back the properties. It may be mentioned, if necessary, that the auction purchaser must return the property if the claimant is successful, if execution is to go on.

Mr. Chari.—*Q*. Would you find a purchaser with an uncertainty hanging on his title? The policy of the law is to make the title of the purchaser as good as possible.

A. Yes.

Q. I suppose you appear in many appeal cases.

A. Yes.

Q. What do you think of the working of Order 41, rule 6, the provision for the stay of execution proceedings? Do they hang up execution of decrees?

A. We don't find much difficulty. Now-a-days we get two months' time to file appeals in District Courts. When the parties know that the other side is going to appeal, they wait till the appeal is decided and they are decided within a month's time. Of course in urgent cases they apply for stay of execution, that is, in cases where delivery of property is to be made.

Q. Have you had experience of judgment-debtors in mortgage decrees? They have got six months to pay the decree amount. They think that they will be able to get a year more if they file an appeal and solely for that purpose file frivolous appeals. Have you had experience in that way?

A. I don't think that in the District Courts they would file an appeal on that ground.

Q. In your experience are all the appeals filed in the District Court based on good grounds?

A. In many cases they are not on good grounds.

Q. Would you suggest any means by which we could cut short the number of appeals, seeing that a number of them are filed on frivolous grounds?

A. The appeals should not be admitted without much scrutiny.

Q. You want a stricter enforcement of Order XLI, rule 11?

A. Yes.

Q. Would you also approve of the suggestion that a judgment-debtor should be asked to pay the decretal amount into court before he files the appeal?

A. In cases where the judgment-debtor has got a real grievance, it may work hardship on him.

Q. How? He can draw back his money, if he wins.

A. To secure money is a difficult thing.

Q. If he is a man worth nothing what does it matter to him if he succeeds or not?

A. Not that. He may have some properties. He will have to go and mortgage some of them to procure money.

Q. Have the provisions of Order 21, rule 2, about satisfaction of decrees led to any hardship in your court by the decree-holder not certifying satisfaction and the judgment-debtor sleeping over the matter and then finding that he could not plead it in execution?

A. I don't find many cases.

Q. Have you any experience of Insolvency proceedings?

A. Yes.

Q. How does the Provincial Insolvency Act work generally?

A. It works in favour of dishonest judgment-debtors.

Q. There is some complaint in Rangoon, I do not know the reason why, that the person who is supposed to be responsible for realising the assets of the insolvent and making them available for the creditors is not quite so energetic as he might be. Do you think it will be better if we have a system of Official Receivers in this Province?

A. I think so.

Q. Do you think it will make for a speedier realisation of the assets of the insolvent?

A. Certainly.

Q. I think we have got a Receiver in Mandalay.

A. Yes. The Mandalay Receiver was telling me that his average income from commissions for 3 years was Rs. 18 a month and that it just paid his chaprasi.

Q. Are there many insolvency cases in the Pegu Courts?

A. There are plenty of them.

Q. I think the insolvents are generally without any assets. Do you think there are enough cases with assets which would pay a fairly decent legal practitioner?

A. There are some cases only occasionally.

Mr. Dunkley.—*Q*. How many applications are filed in a year, in which there are real assets?

A. Two or three a year.

Q. That is just the reason why a bailiff has to be appointed instead of an Official Receiver. Are there pleaders in your court to take up the appointment of Receiver?

A. I think it may as well be tried. Some junior pleaders may take it up.

Mr. Chari.—*Q*. As a matter of honour you mean.

A. Yes. Sometimes some big estates come and they could get some money out of it.

Q. If receivers are appointed you think we can, with advantage, relieve the District Judge of a good deal of insolvency work?

A. Yes.

Q. Are there any provisions in the substantive law which in your experience make for delay in the disposal of civil cases?

A. I have not thought about that.

Q. Does the uncertainty of the Burmese Buddhist Law make for delay?

A. Yes.

Q. Do you think that the codification of the Burmese Buddhist Law is possible?

A. I think it is possible.

Q. Of the whole?

A. Some portion. For example, the law of adoption. Cases are prolonged and a number of witnesses have to be examined. If there is a rule that no adoption should be recognised unless it is registered there will be end of this. So in the case of marriages also. At present there is a case pending before the District Judge. There are sixty witnesses on the plaintiff's side.

Q. Have you had cases about the law relating to benami transaction?

A. Yes.

Q. Have you experienced any inconvenience or delay because of the law as it stands at present?

A. The property is kept benami. The creditor knows that the property belongs to the judgment-debtor but he finds that it is in the hands of the benamidar.

Q. Do you think it is possible to punish the man by making a rule that in such cases he cannot claim it?

A. Yes, just as it is done under the Civil Procedure Code in the case of auction sales.

Q. Can section 66 be extended so as to apply to both the defendant and the plaintiff? Now it is applicable to the plaintiff only.

A. I have not thought much over it.

C. R. M. M. MUTHUKARUPPAN CHETTIAR, Money-lender, Prome.

Translation of the written statement tendered in Tamil.

We, who are Chettis, conduct two kinds of litigation in courts, *viz.*, those based on mortgages and those based on on-demand documents. Several of them are decided *ex parte*. In the Prome District, *ex parte* cases now take 2 or 2½ months. The reason is some order of the district judge. When a case is filed a month is given for the settlement of issues. Before the date fixed for settlement of issues, two other hearing dates are fixed. If on any one of those dates the summonses have not been served on the defendant, a fresh summons is ordered for the date fixed for settlement of issues. That gives about 10 to 15 days' time. Afterwards a fresh date is fixed and the hearing is conducted and evidence is taken and an *ex parte* decree is passed. The way of cutting short this delay is this. For mortgages and on-demand cases, one month's time is not necessary. 15 days' time is enough. If on the date so fixed the summons on the defendant has not been served, and if an affidavit is filed that the defendant is keeping out of the way, substituted service may be ordered and the suit decided. Moreover, in all cases in which the defendant does not appear after receiving the summons, a decree may be passed after filing the plaintiff's affidavit without examining the defendant. Order 37 of the Civil Procedure Code applies only to the High Courts and Chief Courts and not to the other courts. Much delay will be prevented if powers under that Order are conferred on the District Courts and the Sub-Divisional Courts. An order may be made that in such cases the plaintiff's documents and accounts should be filed with the plaint. If that is done much delay would be saved. In execution cases, there is more delay than in the trial of original suits. That is because, according to the present law, no order is made for arrest or attachment without giving notice to the judgment-debtor. Such notices have to be served more than once and objections by the judgment-debtor have to be heard and this takes a long time. As this leads to multiplication of proceedings, a rule may be made that for execution within three years after the date of the decree no notice need be given; and that even after that notices and warrants may be ordered to be issued at one and the same time. This will make for speedy execution. It may be made a rule that the judgment-debtor should raise all his objections at the time fixed for the return of these warrants of attachment and arrest. He should not be allowed to raise objections at a later stage. He may be allowed to file a regular suit if he is not satisfied with the orders on his objections. At present several notices are given before an arrest warrant is issued. Even after he is arrested and even after the sale proclamations, just before the date of the sale, objections are allowed to be taken that the property does not belong to the judgment-debtor or that there are encumbrances; and so the sale is stopped. Thus nearly a year is taken for execution.

3. With a view to get more cases disposed of without increasing the number of Judges, honorary Civil Court Judges may be appointed in places where there are District Courts. Retired Munsifs, Sub-Judges and Sub-Divisional Judges may be also appointed, as in the case of criminal courts where honorary magistrates are appointed. Cases of not more than Rs. 500

in value may be transferred to such courts by the District Judge for disposal.

6. Constant transfer of Judges also leads to delay; for, Judges arriving freshly take time to understand the nature of the cases. The Judges must be kept in one place at least for three years except for special reasons.

8. The concentration of courts in the same place does not lead to delay. The delay is really due to one Judge being made to do the work of 3 or 4 courts. If this is not done and he is given only as much as one court can do, cases will be decided quickly. Even if courts are established in each township, there would still be delay, as lawyers are generally residing in District Court centres and they have to be taken to the Township Courts. Efficient lawyers don't settle in the places where only Township Courts exist. So, the parties will suffer not only delay but also loss.

10. At present the Township Judges have jurisdiction up to Rs. 1,000 and small cause jurisdiction up to Rs. 50. This is enough. The sub-divisional judges can be given small cause jurisdiction up to Rs. 200.

21. For second appeals it may be made a rule that they should not be filed until the decretal amount is deposited into court. Appeals are easily filed under the impression that they can get two years' time, as at present the money need not be paid into court. Moreover, before the second appeal is decided, the judgment-debtor is able to alienate his properties and defeat his creditors.

25. So far as I know, in the case of defendants who do not wish to receive summonses, more than two or three months are taken to serve them. This can be prevented by first fixing 10 days' time for the return of the summons. If it then appears that the defendant is trying to evade the summons action can be taken as contemplated in section 106 on an affidavit by the plaintiff. Then there will be less delay.

28. In the case of defendants residing in places where there is a post office, summons may be sent to him by registered post. In other cases the plaintiff may be given the summons for service, and such service may be accepted, if it is supported by the affidavit of respectable persons of the village.

30. The process-servers may also be asked to report themselves to the plaintiff or the defendant and take aid from them for the purpose of serving. That will prevent delay. There is no use of their being asked to report themselves to the pleaders, because the pleaders don't care for such matters.

33. If after the statement is filed and before the list of witnesses is filed, the plaintiff and the defendant are examined and are made to state who their witnesses are and on what points they are going to give evidence, the preparation of false witnesses will be prevented and also time will be saved.

48. Sometimes adjournments have to be taken for unexpected reasons. They are sometimes taken for the purpose of settling the dispute out of court. No hard and fast rules are necessary on this matter. The rule as to adjournment costs now existing is quite enough. But, if no sufficient reason is given for adjournment, the court should order sufficient day costs to be paid.

51. Commercial suits. Special rules should be made for giving precedence to commercial suits. They may be tried like small cause cases. Special importance should be given to account books as is provided in the Evidence Act.

69. The present law of Insolvency does not help the creditor to realise his debts. A petition for insolvency is immediately accepted and time is fixed according to the discretion of the Judge for discharge. This leads to loss for those who have lent money. If on the other hand, as soon as the insolvency petition is filed, the account books are to be filed in court and the assets are placed at the disposal of the court and the proceedings for discharge are commenced immediately, the case will end soon and the debtors will be benefited.

70. If notice is not given on a petition for arrest, but arrest warrant and notice are issued simultaneously, the cases will be disposed of soon.

72. If the defendant objects to a registered document, at present the plaintiff has to prove the document. The burden must be thrown upon the person attacking the document to prove and a presumption should be made in favour of the genuineness of the document. In the case of mortgage suits and mortgage bonds, even in *ex parte* cases, six months' time is given for payment. This leads to delay. Then a final decree petition has to be filed and one or two notices have to be sent to the judgment-debtor. That also leads to delay. Then time is taken for the sale of the property. Thus more time is taken in execution than in the trial of the suit itself. So, the rule should be so changed that at the end of the six months fixed for payment execution may proceed without obtaining a final decree.

76. Much litigation can be prevented if it is made a rule that partitions must be effected by means of a document on proper stamp and registered.

81. The plea that a person executed a document without consideration, especially at a time when the property is attached by another creditor, should not be accepted. Sale-deeds should be enforced as they are.

83. There is no necessity to make any distinction between sale-deeds and lease-deeds on the one hand and mortgage-deeds on the other in respect of the necessity for attestation. It should not be necessary to have any attestation for mortgage-deeds.

Memorandum of the oral evidence of Mr. C. R. M. M. MUTHUKARUPPAN CHETTIAR, taken on Wednesday, the 7th May 1924.

I come from Prome. I am an agent in Prome. There are 100 Chetty shops in Prome district. There are 10 to 15 in Prome. We have to resort to courts in connection with our business. We experience some inconvenience in the shape of delay in our business in courts. We generally have mortgage and money suits. In some cases the decree is passed *ex parte*. Every suit is posted to a day one month after the institution of the plaint. Before we actually have a suit tried it takes about two or three months even in an *ex parte* case. The cause of this delay is that the courts wait to see if the summons is served on two occasions. Then the court allows the plaintiff to take out substituted service and after that they fix a date for the trial of the suit. In that way it takes two or three months before an *ex parte* decree is passed.

Instead of having recourse to this dilatory procedure the court might at once fix the date of hearing two weeks from the date of institution of the suit. It will be very convenient if the court on the very first occasion, on which the defendant is not served, orders substituted service and posts the suit for hearing to a particular date after that. The proper procedure would be to order the service to be effected by summonses being affixed to the out-door of the last residence of the defendant, taking the affidavit of the plaintiff and declaring that it is proper service.

We would like to have the summary procedure prescribed in Order 37 extended to the mofussil in this province and to district courts as well as sub-divisional courts. I realise that such suits should be instituted within six months after the date of the execution of a pro-note. I should like to have suits tried by summary procedure within the period prescribed for the document, three years or six years as the case may be.

The execution of a decree takes much longer time than the disposal of a contested case. The courts now insist upon two or three notices being sent to the judgment-debtor before issuing a warrant of arrest or attachment of immovable property. If the judgment-debtor appears to raise some sort of objection and he wants adjournment for two to four months that adjournment is granted, and eventually the order is passed by the court many months after the filing of the execution application. I suggest that if an execution petition is filed no notice should be issued but the order prayed for must be made.

In the case of attachment of movable property, claims are preferred just before the sale is going to take place. The proper course should be to invite all objections within a short time after the attachment and if no objection is taken within that time the court should go on with the sale and the persons who come up afterwards should be asked to file suits.

The difficulty in executing a mortgage decree is immense. We try to escape from this. Would you not help us to escape?

It is true that if the claimant institutes a suit in the regular course, there will be stay of execution of the decree pending the disposal of the suit. What I say is that if my suggestion is accepted people would come up at a sufficiently earlier stage and put forward their objections, instead of preferring their claims at the last moment.

I suggest that for the speedy disposal of cases there should be honorary judges to dispose of suits of small cause nature of the value of less than Rs. 500. Retired district judges, sub-divisional judges and township judges should be appointed as honorary judges to dispose of such cases. Such people will be available in each district. Many people wish to do honorary work and most of them are honorary magistrates now. We would take with satisfaction an arrangement like that.

The frequent transfer of judges causes inconvenience because persons newly posted take some time to understand the business of their jurisdiction. We would welcome transfer of people once in three years unless there is proper cause to do it earlier. An officer must be kept at a particular station for at least three years.

One judge has to do the work of three or four courts. If he is given work that he can conveniently manage, suits will be disposed of more speedily. Cases are pending for three or four months.

Many frivolous second appeals are filed simply to gain time. When second appeals are disposed of and we go to execute the decree the judgment-debtor is found without property. I suggest that before second appeals are admitted either the decretal amount should be asked to be deposited or sufficient security should be taken for the discharge of the final decree when passed.

I suggest further that the provisions of the Transfer of Property Act section 106 might be used in connection with the service of summons on defendants. Summonses might be sent by registered post, and in places in which there are no post offices conveniently situated, the summons might be sent to the village headmen. If the process-server goes to the plaintiff or the defendant whose interest it is to have the summons served, things will be done speedily. As soon as the defendant files his written statement both parties might be examined and such examination will prevent the manufacture of evidence later. We have a Nattukottai Chettiar's Association. If you send a notice to the Secretary of that Association he will be in a position to represent all matters connected with delays so far as Nattukottai Chetti Community is concerned. The present Insolvency law helps the judgment-debtor very much and works very great loss to the decree-holder. If the judgment-debtor files an application, the court says "Allright; you better go away" and the decree-holder gets nothing. Within six months they send a notice saying that the insolvent should be discharged. Within that time the insolvent disposes of all his property and the decree-holder sustains great loss. If, however, the insolvent is examined as soon as he files his application and he is made to declare all his assets there would be some sort of relief to the decree-holder. I do not know if there is any rule like that or not. This is the procedure that is taking place in this province. That is why I am making this suggestion. The Additional Judge does the work in Prome. I am not satisfied with the way in which decrees are executed. I shall give you my reasons briefly. As soon as I apply for arrest, notice is issued. The result is that the judgment-debtor has got notice to go away. I am sending out notices half a dozen times. That is the only thing that I realise by filing execution petitions. I file more than 100 suits a year and I obtain decrees for about a lakh of rupees. I have shops in four districts. I know the affairs in all the four districts. I have realised so far only about 25 per cent. of the amount by sale of immovable properties.

The BASSEIN TRADES ASSOCIATION.

Written Statement.

(i) High Courts.

1. A. Original suits—

  (*a*) Title, six months.

  (*b*) Others, one year.

First appeals, six months.

Second appeals, six months.

Miscellaneous appeals, three months.

We think that the short duration given for appeals will be practicable if the notices of appeals are sent to the registered address of the respondents in the lower court; and a communication to the said address by registered post be deemed to be valid service.

(ii) District and Sub-Courts.

Original suits—

  (*a*) Title, six months.

  (*b*) Money, three months.

Regular appeals, two months.

Civil miscellaneous appeals, one month.

Small causes, two months.

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(iii) District Munsif's Court.

Title, three months.

Money, two months.

Rent, two months.

Others, two months.

Small causes, one month.

B. Claim proceedings, two months.

The notice should be served by being sent to the registered address.

C. Two months.

2. In this province, the reasonable period is exceeded in very few cases only.

3. We should suggest :—

  (*a*) appointment of efficient judges, when the vacancies are filled up hereafter [it may be mentioned that the present scale of pay for the township and Subordinate Judges is not attractive enough to draw efficient and honest men],

  (*b*) improving the system of service of process—

    (*i*) by making litigants furnish their registered address to the Court and by holding communication by registered post to the said address to be valid service, (*ii*) by making a rule that lawyers asking for any process from the Court (*e.g.*, summons for defendants and witnesses, notices, warrants of arrest and attachment and sale proclamations), should write out the same in duplicate, and file the same in Court; and if there is no objection to the same being issued, the same is to be endorsed and stamped with the seal of the Court and made over to the party at his option. The said party will be entitled to serve the process himself through the village headman and any such service effected through the village headman should be deemed to be a good service.

(*c*) granting of adjournment of civil cases on sufficient grounds only.

4. Yes, we think it necessary to alter the present method of recruitment. In our opinion (*a*) the present system of recruitment of subordinate judicial officers from the clerical staff which is being done in this province should be altogether abolished.

(*b*) The District Munsifs should be recruited from practising lawyers only.

Subordinate Judges also should be recruited from practising lawyers and members of the judicial service in equal proportions.

(*c*) District Judges should be recruited from members of the Indian Civil Service, the practising lawyers of the High Court and members of the subordinate judicial service in equal proportions.

Indian Civil Service members before joining the judicial service should undergo three years' training in practising lawyers' chambers.

(*d*) The High Court Judges should be recruited two-thirds from the practising lawyers, and one-third from the members of the Indian Civil Service and the judicial service.

5. We think that District Munsifs should be recruited from practising lawyers of at least five years' experience, and in that case no special training would be necessary. The age-limit may be raised to 30 years for this purpose.

6. In some cases it does.

7. We should prescribe no standard of efficiency for an officer as regards the amount of work to be done. In our opinion standard of efficiency should be judged not only by the amount of work done but by this factor being considered along with the result of work so done, *viz* , the number of decisions set aside or confirmed on appeal.

8. We do not think so.

9. We do not think so.

10. We would leave them as they are.

11. As the Service stands at present, we do not recommend any enhanced power for the present.

12. In this province it is not necessary.

13. The change suggested will not be liked by the public.

14. Having regard to the intellectual calibre of the personnel of the village Courts in this province, we are not in favour of conferring exclusive jurisdiction on village Courts and Panchayats. With the passing of the amended Village Act, a change in the personnel of the village Courts is expected; and in that case, we would be in favour of exclusive jurisdiction being conferred on village Courts subject to a right of appeal in the following class of cases, *viz.*:—

(*a*) as regards criminal cases, the cases that are now being tried by Ywathugyis,

(*b*) as regards civil suits :—

(1) suits for recovery of money lent,

(2) suits for recovery of price of goods sold,

(3) suits for recovery of rent of land and house-rent,

(4) suits for damages for personal assault,

(5) suits for damages done by cattle; the value of all these suits not exceeding Rs. 50.

15. (*a*) Subject to what has been stated above, we are not in favour of giving small cause powers to village Courts.

(*b*) Yes.

16. No, not for the present.

17. Yes; we think Sub-Registrars should be authorised to try non-contentious money suits to the value of Rs. 200 only.

18. No; we are not in favour of any further curtailment.

19. (*a*) We do not think that this valuable right should be curtailed.

(*b*) We are not in favour of it.

20. (*a*) We think that many frivolous, second appeals are filed. In our opinion it can be prevented only by awarding of exemplary costs to the opposite party, so that a party will think twice and will take the advice of responsible lawyers before filing such frivolous appeals.

(*b*) We are not in favour of the suggestion, as it may work hardship in many cases.

21. We are in favour of the suggestion but we think that there should be a provision to the effect that the appellate Court can order the deposit to be dispensed with, when it is satisfied that the decree appealed against is obviously wrong.

22. This power is being systematically practised in this province.

23. (*a*) Yes, the right is much abused. It can be effectively curtailed by awarding exemplary damages to the opposite party.

(*b*) We are in favour of the suggestions 1 and 2.

24. We would suggest that parties should be given the power of serving summons on their own witnesses; and service of such summons, effected in the presence of the village Headman and the Ward Headman, and countersigned by them should be deemed to be a valid service.

25. The application of the procedure under section 106 of the Transfer of Property Act is desirable, provided it is arranged by the Local Government that summonses in the villages and towns should be served either through the Headman and Ward Headman or in their presence and countersigned by them.

26 (*a*) The form of plaints does differ from the English writ and the statement of claim.

(*b*) We do not insist on the same at present.

(*c*) The forms of plaints in the Civil Procedure Code are generally adhered to.

(*d*) In those cases in which the same are not adhered to, the plaint may be returned for amendment.

27. Not much.

28. (*a*) We think service of summonses and notices through Post Offices would be effective.

(*b*) Village officials can be used. They ought to be required to call respectable witnesses to see the service of process, and to affix their signature to the summonses.

29. Yes, the rule suggested will be a salutary one; and once any letter or notice is sent to the registered address by registered post, there should be no room for complaint.

30. We are in favour of the suggestion.

31. We suggest that in all cases the parties should be examined at length before the framing of issues.

32. Yes, the provisions of these orders are not much made use of. The reason seems to be that the Bar is not yet accustomed to the same. The remedy seems to be that the Judge should make it a point not to allow costs for proving any document or calling any witness, when the same might have been dispensed with by use of the provisions of these orders. In some cases, the Judge would be justified in penalising a party for thus taking up the time of the Court unnecessarily by awarding exemplary costs.

33. We think the suggestions would work very well.

34. Yes.

35. (*a*) No.

(*b*) We would suggest that the party who calls unnecessary witnesses should be mulcted in exemplary costs.

(*c*) No. We think such a power is not desirable.

36. We are in favour of the suggestion.

37. We are not in favour of this suggestion.

38. No. Not for the present.

40. We do not think it desirable.

41. (*a*) Yes, much delay is caused. A general citation also ought to be issued in each case calling upon anyone who is desirous of being appointed a guardian *ad litem* to come and apply to the Court.

(*b*) We are in favour of the suggestions. The same along with the issue of general citation stated above, would be sufficient to safeguard the interests of the minors.

42. In the majority of cases these are not abused. In cases where they are abused, Courts ought to grant exemplary costs and compensation.

43. No, not in this province.

44. Yes, in the majority of cases, it is done.

45. Yes.

46. Yes.

47. Yes, the cases are unusually delayed by the issue of commissions to India.

We suggest that the warrant of commission should be made over to the party applying for the same. He will present the same to the Court to which it is issued and get a commissioner appointed at once. He can then get a date fixed by the commissioner for examination of the witness at once, and issued sub-pœnas accordingly. A party should be given sub-pœnas to serve the same on his own witnesses, and such service effected through the village headman or in his presence should be deemed to be a valid service.

48. Yes.

49. Yes, it is done in the majority of cases. The rule can be more strictly enforced if the inspecting Judges are strict about it.

50. We think so.

51. Yes. The commercial suits should be given preference.

52. (*a*) In execution of decrees against lands we would suggest that warrant of attachment and notice and warrant of sale as well as notice to the judgment-debtor may be simultaneously issued.

(*b*) The provisions for claim proceedings ought to be abolished, the parties having given the right of filing declaratory suits straight off, with a right of appeal. They ought to be allowed to do so on eight annas court-fee stamp. Now, a claim case is almost invariably followed by a regular suit and the time of the Court is taken up in inquiry about the same subject matter twice.

53. Yes We are in favour.

54. Yes.

55. Add the words " or the auction-purchaser at a sale in execution of such a decree."

56. Yes.

57. Yes.

58. Yes.

59. (*a*) Yes.

60. No.

61. Yes, we think Order 22, rule 1 (*b*), ought to be kept.

62. Yes.

(*b*) The Court to which the decree is sent ought to have the same powers as the Court which transferred the decree.

63. (*a*) No.

(*b*) Yes.

64. (*a*) Yes.

(*b*) No, simultaneous issue is desirable.

(*c*) Yes; but if the vakil endorses on the summons that he has retired from the case, fresh notice may have to be issued to the parties. To obviate this, we would suggest that notices may be sent to the registered address of parties by registered post.

65. Yes.

66. Clauses (*a*) to (*d*) we are in favour; they would free the purchaser from future litigation.

(*c*) We think that the time granted at present is reasonable.

(*d*) The final decree may be dispensed with. There need not be a separate personal decree. It may be contained in the original decree.

67. Yes, much delay is caused.

(*b*) We should suggest that stay orders be passed only in cases when the appellate court is *primâ facie* satisfied that the decree appealed against is erroneous.

(*c*) Yes.

(*d*) Exemplary costs for advocates' fee and exemplary compensation for the loss suffered by the decree-holder by loss of interest or otherwise—owing to the decree being stayed.

68. No.

69. (*a*) Yes.

70. Yes.

(*b*) Yes.

71. The effect of the provisions of the Law of Evidence that tend to protract trials unduly can be obviated if the suggestions in questions 72 and 73 be answered in the affirmative.

72. Yes.

73. Yes.

76. Yes.

77. Yes.

78. Yes.

79. Yes.

80. (*a*) Yes.

(*b*) The only exception would be that a party who cannot sign should be made to put his thumb impression.

81. Yes.

82. No; enhancing the rate of court-fees might work hardship in particular cases.

83. No.

84. They may be declared void in law.

85. No class of cases should be referred except with the consent of the parties.

86. No.

87. Yes, we would suggest the immediate codification of the Burmese Buddhist Law.

Mr. P. N. CHOWDHURY, 1st Grade Pleader, Bassein, representative, Bassein Trades Association, called and examined on Friday, the 9th May 1924.

Mr. Chari.—*Q.* I see you are a practising lawyer in Bassein?

A. Yes.

Q. You are a first grade pleader?

A. Yes.

Q. In what courts do you practise? In civil courts or criminal courts?

A. In civil courts.

Q. How many civil courts are there in Bassein?

A. There is the District Court, the Sub-Divisional Court and two Township Courts.

Q. Is there an additional District Judge?

A. Yes, there is.

Q. He tries, I suppose, cases handed over to him by the District Judge?

A. The District Judge does not send cases to him, but cases up to the value of Rs. 20,000 have to be filed in his court.

Q. Is the additional District Judge a member of the subordinate service or Burma Judicial Service?

A. Subordinate Service.

Q. Do you think that any training other than that which is given at present is necessary for these subordinate judges?

A. I think they ought to be recruited from practising lawyers and the method of recruitment from clerks ought to be abolished.

Q. Would you not take B. L. direct?

A. No. I would like to have them after they have acquired some experience.

Q. What experience would you like a B. L. to have?

A. At least three years' practice at the Bar.

Q. Do you think you can get men with any practical experience to join the subordinate service?

A. The present scale is not attractive enough. They won't join at the present pay.

Q. So you want to raise the pay at the same time?

A. Yes.

Q. What do you think should be the pay?

A. It should start from Rs. 300 and go up to Rs. 500.

Q. And what pay would you fix for the Burma Provincial Judicial Service?

A. From Rs. 500 to Rs. 1,000.

Q. With regard to Indian Civil Service people, you suggest that they should have at least three years' training in a barrister's chambers? Do you not think that is too much?

A. You can reduce it two years. I think some sort of actual training is necessary.

Q. It is merely to fit them for judicial service and why should there be such a lengthy apprenticeship?

A. They have to decide cases as District Judges and unless they have got some actual training there is likelihood of their making mistakes.

Q. Can you not give them training under an experienced District Judge? Do you not think it will be better than getting training for three years in a barrister's chamber? If that is done, do you think only six months' training would be sufficient? Of course you are right that they must get some sort of training of that sort because in that case they will become acquainted with everything?

A. Yes, that may be done.

Q. As regards the efficiency of subordinate judges, are they fairly efficient?

A. I do not think they are up to the mark.

Q. What is the defect?

A. Want of knowledge of law.

Q. So you have nothing to say against the method of recruitment. We are trying now to recruit as many B. Ls. as possible. I think you will find that only seven people have been promoted from the subordinate judicial service to the Burma Provincial Service. Only seven men out of quite a large number have been promoted.

A. Yes.

Q. Perhaps the recruitment is all right, but we are unlucky in our choice.

A. Yes.

Q. Do you think a pleader who has practised for three years, can make much money? Do you think that he gets a good many cases?

A. Here in Burma he can get a good many cases.

Dr. DeSouza.—*Q*. At present I think 40 per cent. are promoted from the subordinate service and the rest are directly recruited?

A. Yes. I have suggested that the number of people promoted and the number of people directly recruited should be equal.

Q. Have you any objection to lower dourt judges being promoted to subdivisional judgeships?

A. My suggestion is that practising lawyers should be appointed as subdivisional judges, and that township judges should not be promoted to these appointments.

Mr. Chari.—Then I am wrong, I was thinking of clerks promoted to higher judicial service.

Dr. DeSouza.—Do you think that in the first three years a pleader can get good practice?

A. That is not the case in India, but in Burma a pleader can get a good many cases in three years. Here clients do not shun junior pleaders. Here the case is just opposite to that of India.

Q. So litigants will come to a new pleader thinking that as he is a new man he may be better than an old pleader and they should try their luck there?

A. Yes.

Mr. Chari.—*Q*. You advocate devolution of certain powers on the village headman. Do you think people would like it? If the jurisdiction is not made exclusive and people have got the option either to go to the township court or to the village court, to which court will they go?

A. Naturally they will go to the township court.

Q. Do you think people have confidence in village headmen and they would like to go to them of their own accord?

A. At present village courts are not so popular, but I think that when the new Act is carried out and village committees are elected under the provisions of the new Act they will become very popular.

Q. But the new Act only provides for election of a certain number of villagers to help the village headman?

A. That is the village committee and the appointment of the headman itself rests solely on election.

Q. Do you think, if you have panchayats of prominent headmen, say 2 or 3, to sit and try civil cases and give them exclusive jurisdiction, that will be more appreciated than the powers being delegated to the village headman exclusively?

A. I think that will be much better than confining it to one man.

Q. Would you give a right of appeal from the decisions of these Village Courts?

A. Yes.

Q. To what court would you give the right of appeal?

A. To the Township Judge.

Q. As regards appeals, I think there is not much delay in the disposal of appeals in the District Court. Is it so?

A. Only the service of process accounts for the delay; the hearing does not take much time.

Q. Would you be in favour of some kind of restriction on the right of appeal? I find you do not like the right of appeal to be curtailed.

A. If the appeal is frivolous, I would like exemplary costs to be granted.

Q. I see from your answers that you would also be in favour, at least in second appeals, of making the party deposit the decretal amount in proper cases.

A. Yes.

Q. You would not advocate its being made a general rule that he must in all cases deposit the decretal amount?

A. No.

Q. Do you think it is possible to introduce the English form of the statement of claim instead of the plaint as now?

A. I think it will be rather difficult to do it at this stage.

Q. Why? The statement of claim is only in a short form, *e.g.*, £1,000 being the amount lent or due on pro-note or damages. Is it not enough to give the defendant notice as to what claim is made against him and if the matter is going to be decided *ex parte*, is it not quite enough?

A. He may have some idea from it.

Q. Supposing it is a just claim and the man does not want to dispute it; what is the object of having a lengthy plaint in a case where the claim is practically admitted?

A. The only thing is it will be new to the lawyers in this province.

Q. I suppose there is nothing complicated in it. I suggest that there is no reason why a plaint should be lengthy when the claim is admitted. Of course when it becomes a defended suit there will be a summons for directions and the parties will be asked to give detailed pleadings.

A. Yes, that can be done.

Q. As regards service of summons you advocate service through the post office.

A. Yes.

Q. There is an objection to it that the postal peon would be no more honest than a process-server with the additional disqualification that he is not subject to the discipline of the court.

A. I say from experience that wherever registered letters have been sent they have been served satisfactorily. Where a man could not be served by a process-server, he is served by a post peon.

Q. Presumably he did not know what there was in the registered letter. If he knows it and wants to avoid it, he would bribe the postal peon just as he bribes the process-server.

A. The process-server, if he goes to the village, cannot afford to stay there for more than 2 or 3 days, but in the case of a postal peon he will be able to go there every day.

Q. Then you would confine the service by post to the towns and villages where there is a daily postal service.

A. Yes.

Q. As regards your suggestion that processes, at least in interlocutory motions, should be handed over to the pleaders and they should be allowed to serve them, do you think that will be generally acceptable?

A. I think many parties would like to have it done.

Q. Would not the other side always come and say that the lawyer's clerk filed a false affidavit?

A. I have suggested that this may be served in the presence of the village headman. In that case the chance of dishonesty is reduced.

Q. You would advocate the same thing for the service of witnesses also?

A. Yes.

Q. As regards the issue of commissions there is a good deal of delay, where the commissions have to go to India. What do you think is the main cause of the delay?

A. The delay seems to me to be in the courts in Madras. I suggest that the commission be made over to the party personally who will go to India and get a commissioner appointed there and then ask for sub-pœnas for serving the witnesses.

Q. Why should we not appoint him here and send it directly to him?

A. In many cases the parties themselves do not know who are the practising lawyers and whether they would be willing to execute the commission or not.

Sir T. Desikachari.—In this connection I might say that commissions are sent either to the Presidency Small Cause Court or to courts in the Madura District.

A. Most commissions are issued to Sivaganga.

Q. In those cases where the commissions are local commissions, the parties do not come and do anything at all. The court is not in a position to know who are the parties, who are the witnesses, who is going to examine them. They wait for 1 or 2 or 3 weeks. Nobody appears. Then they ask for further instructions. Then they get some more time. Then at the last moment the party appears and says that he wants 2 months' more time. Then he gets a further extension of time. There is some want of system somewhere either on account of the negligence of the parties or of the courts.

A. In any case reminders have to be sent by telegrams to expedite the return of commissions.

Mr. Dunkley.—*Q.* If judges were to fix a definite time and have it endorsed on the commission warrant that if the parties did not enter appearance within that time they would not be allowed any further time, will that be sufficient?

A. Yes.

Mr. Chari.—*Q.* The commissions have to be applied for within a certain time. Are commissions refused if they are applied for at a later stage?

A. The understanding is that they should apply at the earliest possible opportunity.

Q. Is it strictly enforced?

A. Yes.

Q. I find that you advocate doing away entirely with the investigation of claims?

A. Yes.

Q. And you think that will save double hearing?

A. Yes.

Q. What about those cases where the claim is disallowed and the matter ends there, *i.e.*, summary procedure?

A. I think they are not many.

Q. Are most of these claims frivolous?

A. I think most of them are frivolous.

Q. What percentage is frivolous?

A. About forty per cent.

Q. As soon as the claim petition is filed does the judge as a matter of course stay the sale of the property?

A. Yes.

Q. Does the judge stay the sale after the suit is filed?

A. Yes. Most of the judges think that it might turn out that the sale is a wrongful sale.

Q. So you have a very unsound ruling to follow?

A. I think the ruling is sound as the law stands.

Mr. Dunkley.—*Q.* Supposing a claim is dismissed under Order XXI, rule 61, there does not seem to be very much ground for asking for stay. Do you not think it will be a good thing to refuse the stay if the summary case under rule 58 was decided against him?

A. If the stay application is refused the successful claimant may be prejudiced afterwards.

Q. If the application under rule 58 is disallowed it does not seem likely that the suit under rule 63 would be successful.

A. In some cases it is successful.

Q. In some cases only, but do you not think that on the whole less hardship will be caused by refusing the stay in those cases?

A. Less hardship will be caused, but the successful claimant will suffer in some cases.

Mr. Chari.—*Q.* As regards appeals I find you say that Order 41 rule 11, is extensively used. What does the judge do as soon as an appeal is filed?

A. He admits those in which there is a point of law.

Q. And you argue and then he admits the appeals?

A. Yes.

Q. And after notices are issued the respondents appear?

A. Yes.

Q. What percentage of appeals which are posted under Order 41, rule 11, and have been admitted are successful?

A. I think about 70 per cent. of the appeals are successful.

Q. What percentage does he reject of those appeals which are fixed under Order 41, rule 11?

A. A good number is rejected.

Q. You think about two-thirds are successful?

A. Yes.

Q. Is it a fact that some appeals are filed only to delay the execution of a decree?

A. Even the High Court stays the proceedings as soon as an appeal is filed.

Q. There is another difficulty where the High Court stays the proceedings. The High Court sends for the whole of the records, and the result is that the lower court cannot possibly execute a decree, it has no copy of the decree.

A. Yes.

Q. Do you think a ruling by the High Court that the records should be returned at once to the original court would be a solution of this difficulty?

A. Yes.

Q. And there should be more care in calling for the records?

A. Yes.

Q. With regard to stay of execution you suggest that stay orders should be passed only in cases when the appellate court is *primâ facie* satisfied that the decree appealed against is erroneous?

A. Yes.

Q. That is to say that it has to see the appeal first before he stays execution?

A. Of course he has to do that as in the case of pauper appeals. On the same principle these applications for stay of execution should be granted.

Q. The only objection seems to be that the judge may not have time in every case to say that there are some merits of the appeal. Does not the present rule work well, that is to say, he should grant stay only in cases where he thinks that there will be damage done to the applicant unless execution is stayed? Do judges here see that requirements of Order 41, rule 5, are satisfied before they issue stay orders?

A. Of course that is done now.

Q. Do you think that in spite of this there is a good deal which requires the attention of the judge?

A. Yes.

Q. I see that you are in favour of simplifying mortgage decrees by making all the three decrees into one. First of all there is a decree ordering the defendant to pay the money, secondly one directing sale if the money is not paid up and so on. Do you think there is no need for a separate personal decree? Do you think that will work well?

A. Yes. There should be only one decree instead of three decrees passed at different times.

Q. As regards the suggestion that frivolous suits can be put down by enhancing the rate of court-fees in suitable cases, you say that enhancing the rate of court-fees might work hardship in particular cases. May I know how it will so work?

A. I think it is very difficult to know in the beginning whether the suit is frivolous or not.

Q. Do you think it will improve matters if an order is made to pay additional court-fees at the end of the suit?

A. If you make a rule like that I have no objection.

Q. But will you be able to recover money at that time?

A. I think you will be able to do so in many cases. I think it will be much better if an order at the end of the suit is made for additional court-fee.

Sir T. Desikachari.—*Q*. What about the new Act of 1922 amending the Civil Procedure Code by which the court can make an order for payment of additional costs by way of compensation? Do you think that is reasonable?

A. Yes, that is quite reasonable.

Q. Is that rule being enforced here?

A. Yes.

Q. According to that a court can make any such order for the payment of an amount not exceeding the limits of its pecuniary jurisdiction. So the township court in Burma can order up to the limit of Rs. 1,000 and sub-divisional court up to Rs. 5,000. I think that will be better than enhancing the rate of court-fees?

A. Yes.

Mr. Chari.—*Q*. With regard to champerty and maintenance, you say that transactions tainted with them may be declared void in law?

A. Yes.

Q. Do you not think that in many cases it helps a poor man to establish his claim which otherwise, *i.e.*, without assistance, cannot be established?

A. Of course in some cases it may benefit the man, but in the majority of cases they are of speculative nature and they have now become a nuisance.

Sir T. Desikachari.—*Q*. With regard to champerty what do you say? Do you think any rule could be passed making champerty an offence?

A. I suggest that the deed may be declared to be void so that the man cannot get anything at all.

Q. You would add a proviso to section 23 of the Contract Act that such contracts should be void on the ground of public policy?

A. Yes.

Mr. Dunkley.—*Q*. You won't make it a penal offence?

A. No.

Mr. Chari.—*Q*. Do you think that the codification of the Burmese Buddhist Law would be acceptable to Burmese Buddhists?

A. I think a section is in favour of it.

Q. Do you mean the majority?

A. Yes.

Q. Would you take up the codification of the whole law or would you select portions of the Buddhist Law for immediate codification?

A. I think, I will take up the whole lot.

Sir T. Desikachari.—*Q*. I want to know whether the state of the Township Courts and the Sub-Divisional Courts is such as to permit of the enhancement of the pecuniary jurisdiction and, Small Cause jurisdiction. Taking the Township Courts, would you increase the pecuniary jurisdiction to Rs. 3,000 as in Madras?

A. I won't advocate it in this province.

Q. On the ground that the subordinate judiciary in this province is not fit enough to exercise that jurisdiction?

A. Yes.

Q. With regard to Sub-Divisional Judges are you in a position to recommend the enhancement of jurisdiction to Rs. 7,500?

A. Not for the present.

Q. Having regard to the fact that their jurisdiction has been recently enhanced you are not in a position to recommend any further enhancement of their pecuniary jurisdiction?

A. Yes.

Q. Now, there is a number of appeals and the majority of appeals do not succeed. As far as possible in suits of small cause nature are we not to have a finality? Is it not right that there should be no appeals at least in suits of a small value? Could Township Courts exercise small causes jurisdiction up to Rs. 500?

A. They have got jurisdiction up to Rs. 100.

Q. Won't you give them more jurisdiction?

A. I won't advocate any increase of powers at present.

Q. What exactly is the reason for this distrust of the Township and Sub-Divisional Judges? Is it want of capacity or honesty?

A. Both.

Q. They are neither efficient nor honest so as to command your confidence?

A. Yes.

Dr. DeSouza.—*Q*. Would you be in favour of a rule like that framed by the Bombay High Court with regard to the process service in the City of Bombay that processes should be sent by registered post prepaid? It is said that the signature on the acknowledgment by the addressee or an endorsement by the post peon that he refused to accept service would be accepted as *primâ facie* proof of service. Will such a rule satisfy you?

A. Without any further evidence?

Q. It is *primâ facie* proof of service. The signature of the addressee on the acknowledgment or an endorsement by the postal peon that he refused to accept service.

A. I would like the report to be accompanied by an affidavit.

Q. Will a rule like this apply to large towns, it has worked quite satisfactorily in Bombay and in other large towns? "Provided that where any such summons is to be served within the limits of the town of Bombay, it may be addressed to the defendant at the place within such limits where he is residing and may be sent to him by the Court by post registered for acknowledgment. An acknowledgment purporting to be signed by the defendant or an endorsement by a postal servant that the defendant refused service shall be deemed by the Court issuing the summons to be *primâ facie* proof of service. In all other cases the Court shall hold such enquiry as it thinks fit and either declare the summons to have been duly served or order such further service as may in its opinion be necessary."

Would you like to have such a rule made applicable to larger towns such as Rangoon, Mandalay, etc.?

A. Yes. It may be made applicable to all the district towns.

Q. Have you got any general observations to make with regard to improvements of process-servers in the districts? Of course there is a general complaint everywhere; have you any suggestion to make by which we can improve the service of processes?

A. Of course, it is very difficult to improve the process-serving staff but what I suggest is that summons should be given to the party for service on the witness in the presence of the village headman.

Q. That is open to serious objections and you yourself realise that. Would you suggest anything in the way of improving the personnel of the process-servers?

A. On this scale of pay we cannot expect a good staff.

Q. So the first suggestion that you make is that their pay should be improved. What suggestion would you make as to their remuneration?

A. Their starting pay should be at least twenty-five rupees and then you will get reliable men.

Q. You would naturally require that the men should be literate; able to make returns in their own hands and able to read and write Burmese.

A. Yes.

Q. Well, I understand that the present scale of pay does not admit of any deterrent punishment. If you punish a process-server he simply says that he does not want to serve. They have got no inducement to continue the work honestly with the present prospects. The first thing you would suggest is to improve their scale of pay?

A. Yes.

Q. With regard to supervision, do you think anything can be done? Do you think the supervision is as good as it might be?

A. As regards supervision it is very difficult to suggest anything of practical nature. We can only suggest that parties should file their complaints as to the service.

Q. They make a general vague complaint about the unsatisfactory nature of the work but they never name any process-server.

A. The judge can find out from the work whose work is not properly done.

Q. In your experience do you know a case where a process-server has been seriously dealt with?

A. I have heard cases where they have been dismissed, but such cases are very few.

Q. There is a very effective way of checking the work of bailiffs and process-servers on the spot by going over the ground over which the process-server and the bailiff have gone. This system has worked very satisfactorily in Bombay. There is an officer who combines with other duties his duties as inspector of bailiffs. He is *ex-officio* guardian of estate of minors, appointed by the court and in addition he is also inspector of bailiffs and goes over the ground covered by the process-server and examines the returns in the light of his enquiry and thus brings the process-server to book. The system is only to give one officer for the whole district and his inspection will be unexpected. It is only the fear of supervision rather than the actual results. The only difficulty seems to be to spare an officer for such an appointment. Do you think such a system would work well if introduced in this province?

A. If you get a reliable man the system would work very well. The man must be very reliable.

Mr. A. J. DARWOOD, I.C.S., District and Sessions Judge, Amherst.

Written Statement.

25. There is no doubt considerable delay in suits, owing to non-service of summons. In cases where the defendants are believed to be evading service, a prompt application of the rules for substituted service rarely fails to bring them before the Court.

Service of processes by registered post should also be recognised as effective in such cases.

In the case of defendants who are absent but whose address is known service of process by registered post should also be recognised provided that the party asking for process satisfies the Court by oath or affidavit as to the accuracy of the address given. This form of service should only be used as supplementary to the forms now existing, but it frequently happens that a registered letter would be correctly delivered when no process can ever be served. The Court should therefore be given discretion as to how far service by registered post is, in each case, to be declared sufficient service.

I do not consider that the application of the procedure under section 106, Transfer of Property Act to civil suits is suitable. It would lead to further disputes.

26. The forms of plaints prescribed in the Civil Procedure Code are on the whole adhered to in this District, but I would attach no penalty to non-adherence.

A number of plaints are drawn up by petition-writers who know not the Civil Procedure Code.

As the main object of the Courts is the dispensation of justice, the form in which the poor and ignorant litigant presents his plaint does not appear to me to matter much. He is paying for the justice he expects to receive, and ought not to be hampered by too many rules as to the manner of presenting his claim.

27. In headquarters and the Sub-divisional Courts where pleaders are available the provisions of Orders VII and VIII of the Civil Procedure Code are more or less adhered to.

28. *Vide* answer to Question 25. I think the village officials would resent being converted into process-servers and I am not in favour of using them for that purpose.

29. Yes.

30. This should not be made a rule of the Court as more time than ever is likely to be wasted by process-servers hanging about pleaders' offices waiting for instructions. The Court should have, and I presume has, ample discretion in giving directions to a process-server as to the best manner of service in each case and if a pleader asks for the process-server to be sent to him, no Court would ordinarily refuse the request.

31, 32 and 33. In my opinion it would be an excellent thing if parties were fully examined on the whole case even before issues are framed and certainly before witnesses are subpœnaed. There is little doubt that such an examination would tend to minimise the quantity of evidence called. Objections might be raised to the examination of a party when the onus of proof is not on him, but as a matter of procedure it should be imperative that both parties should first of all be examined.

If any of the parties do not desire to be examined at that stage of the case, they should not be allowed to be examined later, but the Court should have absolute power to call and examine any party at any stage of the case in the interests of justice.

Pleadings are often defective and it is only after an examination of the parties that the Court arrives at a true appreciation of the respective cases of the litigants.

I would therefore not place so much reliance upon pleadings, which are mostly the result of a lawyer's skill, as upon the actual facts narrated by the parties, for the settlement of issues, before a date is fixed for trial. This examination of the parties would also have the effect of eliminating, to a great extent, the element of surprise which is so often introduced into a case, particularly with regard to the production of documentary evidence. Technically no doubt there is a safeguard from such surprise in Orders XI, XII and XIII of the Civil Procedure Code, but I have never seen these rules taken advantage of in the Courts subordinate to the Amherst District Court, and they are very rarely made use of even in this Court. The reason is that issues are framed generally on the day on which the written statement is filed or a day or two later and a date for trial is given at once. In this Court the trial date is generally within a month from the date issues are fixed and parties have no time to make all the formal applications necessitated by those rules which, if sought to be enforced, would in themselves add several weeks to the duration of a case. In my opinion the procedure laid down in Orders XI and XII of the Civil Procedure Code are much too formal for use in the District Courts of this province. The production and inspection of documents relied upon by any party should be obtained by an oral application to the Court asking for their production and inspection. The same remarks apply to admissions.

If the parties were examined in full before issues were framed a good deal of this formal procedure which tends to delay the trial of a case considerably would be quite unnecessary.

34. The provisions of Order 16, rule 16, are not as a rule strictly enforced, but once a trial has started there is usually little difficulty in obtaining the attendance of witnesses for the subsequent hearings. If subsistence fees are paid in advance as provided for by rule 16 there is no reason why a recognizance bond should not be entered into by the witness for future attendances, though this has not hitherto been the practice.

35. The examination of the parties and their cross-examination before the framing of issues as suggested in the reply to Questions 31, 32 and 33 should go

far to prevent the calling of witnesses who ultimately prove nothing and should enable the Court to control the citing of unnecessary witnesses.

I do not think on the whole that much unnecessary and avoidable oral evidence is let in except through ignorance of the law.

36. Affidavits in this country—at least in large towns—are so easily obtained that as a rule they carry no weight. Their use might save time in cases where there is no appeal, but the opposite party should have the right to cross-examine the deponents.

37. Where in the opinion of the Court an examination or cross-examination is unnecessarily prolonged, the Court should have discretion to impose a time limit.

40. The difficulty of adding legal representatives in the case of the death of a defendant is often great and leads to long delays. I do not regard it as possible to throw on such representative the duty of requesting the Court to add him as a party. He may not know of the existence of the suit. The provisions of Order 22, Civil Procedure Code, have hitherto worked satisfactorily in this district.

41. No difficulty has hitherto arisen in this connection in this district (Amherst).

42. On the whole very little undue advantage is taken of obtaining *ex parte* injunctions and orders. Attachments before judgment used to be far more common than they are now—thanks to the rules laid down in the Lower Burma Courts Manual (para. 644).

43. No.

44. Yes, in this town at least (Moulmein).

45. The judges in this district usually fix dates themselves.

46. Pleaders are usually consulted. No rules appear necessary. This is a matter of courtesy between the Bench and the Bar.

47. Yes. In many cases this is the resort of the desperate, with the result that the commission is delayed inordinately.

48. Examination on interrogatories is as useless as an affidavit. The answers can be supplied to the deponent by the party interested.

Commissions are necessary evils and should be left severely alone.

49. Adjournments are easily granted at present and the insistence on written applications supported by affidavits would certainly speed up work by making postponements a little more difficult.

At the same time I feel bound to say that as a litigant pays somewhat highly for the privilege of instituting a suit and as his quarrel with his opponent is a purely private one, I fail to see why he should not get a postponement when he wants one provided his opponent agrees and the witnesses present agree to come again. The public interest does not suffer unless it happens that the Judge finds himself without any work to do because of the postponement. But Judges here are rarely in that happy position. They generally have quite enough to go on with even if one case does fall through.

The costs awarded for an adjournment given on payment of costs are rarely sufficient to prevent frivolous applications for adjournments.

Suits are rarely tried continuously day by day in most of the subordinate Courts here as every date is filled up. If therefore a case is unfinished on its fixed date, it goes to the next available date. If witnesses have to travel long distances they prefer to return home and come back on a future date. If they are living in the vicinity of the court they again do not object to coming on a future date.

The present arrangements work well in this district and call for no change.

50. I think so. All inspection notes are sent up to the High Court which can always draw the District Court's attention to irregularities, etc.

51. No.

54. Yes. This would save a good deal of time.

55. Inasmuch as doubts have been expressed whether an auction purchaser under a money decree is a representative of the decree-holder, it should be enacted that he is such a representative for the purposes of section 47, Civil Procedure Code.

Order 21, rule 95 seems, however, to provide such a purchaser with a remedy for obtaining delivery of possession.

56. I am entirely against curtailing the rights of a decree-holder by limiting still further the period within which execution can be taken out. In the majority of cases their troubles begin with their decrees and judgment-debtors with the aid of friends put every obstacle in the way of decree-holders obtaining their just dues. A further limitation of the time within which decrees must be executed will only stimulate judgment-debtors to further delaying tactics.

57. I see no objection to the proposed alteration though I do not understand on what principle a purchaser at a Court sale is entitled to greater protection as regards his title than a purchaser in the open market.

Benami purchases are not as common in Burma as they are in India, but they do sometimes occur and it seems incongruous that the benamidar should be able to use the law as a shield against his own fraud if he chooses to be fraudulent.

58. I am not in favour of the proposed amendment. The question of payment, if denied, is one of proof.

If the judgment-debtor can produce a receipt signed by decree-holder for money paid out of Court, why should this proof of payment be rejected?

59. The first suggestion is a good and feasible one. I do not think that the second proviso to Order 21, Rule 16, should be deleted or modified. If deleted it would enable a judgment-debtor who was, let us assume, the principal debtor to take out execution against his co-judgement-debtor who was merely a surety in the first instance. A modification of the rule, under which, *e.g.*, a surety could dispute his liability for any part of the judgment-debt as against his co-defendant who is the transferee of the decree, would lead to endless litigation, inexpensive to the party who seeks to execute the decree, but harassing to his opponent.

60. I see no reason for deletion of this rule.

61. (*a*) (1) No. (2) Yes.

(*b*) No objection.

62. I see no reason for a change in procedure. The Court can always take security before staying execution and the grounds for such stay have to be "sufficient."

63. There is no necessity for so many notices. One notice at the commencement of execution proceedings should be sufficient for all subsequent proceedings.

64. If a writ of attachment is issued without notice to the judgment-debtor he should be given a chance to settle the terms of the proclamation of sale.

Service of notice on the pleader of a judgment-debtor would be ideal, but most pleaders in this country are not so much in touch with their clients that they are able to find them when wanted. Moreover, clients are apt to desert a pleader who loses their case and would consider that he was aiding the other side if he were used as an intermediary for fresh trouble for them.

67. I should say no—so far as this district is concerned there has never been much trouble in connection with stay of execution pending appeal. Normally the appeal is disposed of within a month or two of the date of filing.

70. (1) No. (2) The provision for attachment before judgment does certainly prevent delay in execution proceedings.

71, 72 and 73. A plaintiff should in my opinion be permitted to prove a document of mortgage in any way he likes and not necessarily by the evidence of an attesting witness if available. I do not, however, favour the suggestion that the mortgage shall be presumed to be valid until the person who disputes its validity can prove his case. Such a position is more likely to lead to fraud than the reverse case where the party alleging a mortgage, has, if necessary, to prove it. I fully agree that secondary evidence should be allowed in any form if both parties agree.

75. The authority of civil Courts is frequently set at defiance by people who calmly take possession of property which is under attachment. The individual to whose care such property is entrusted by the bailiff is usually powerless to offer any resistance and application to the criminal Courts is not very helpful and is expensive and wasteful of time.

In the case of a refractory judgment-debtor who refuses to give up possession of immovable property, the bailiff's department seems to be powerless. To "remove" the judgment-debtor would in such case need the application of force. The bailiff's department would feel itself much stronger if it had the power—or if the Court had the power—to call upon the civil police to effect a removal or to arrest a refractory judgment-debtor who resists the order of the Court.

Speedy trial of suits.—Why not adopt a summary procedure for suits under Rs. 1,000.

As soon as each defendant has been served, and he comes to Court he should be examined on the plaint. It will be unnecessary for him to file a written statement. The plaintiff can also be examined to explain or reconcile discrepancies between his plaint and the statement of the defendant. Issues could then be framed and a date given for trial if necessary.

There are of course several objections to this form of procedure, but as a means of getting at the truth of a case it is better than formal pleadings.

76. Yes, a good deal of litigation in this district is based upon oral partitions of land.

77. To this also I agree. Partnerships are frequently alleged and it is often a puzzle to know whether or not they really exist.

80. The people who cannot sign their names are just the people who execute documents a long way from any Registration Office. I do not consider the proposed rule a feasible one.

Mr. A J. DARWOOD, I.C.S., District and Sessions Judge, Amherst, called and examined on Wednesday, the 14th May 1924.

Mr. Justice Stuart.—*Q.* How long have you been in judicial service?

Mr. Darwood.—Since 1921.

Q. You were appointed as a District and Sessions Judge when you were practising at the Bar.

A. Yes.

Q. How long had you been in practice?

A. 25 years.

Q. Where are you stationed now?

A. Moulmein in Amherst District.

Q. Is that the only district where you have been in?

A. Yes, so far as judicial work is concerned. As a Divisional Judge I had to go down to Tavoy and Mergui districts and Thaton district.

Q. How many courts have you in Moulmein?

A. I have an Additional District Judge, Sub-Divisional Judge and 4 Township Judges.

Q. What control have you over these subordinate courts to see how they are handling their cases in addition to the inspections that you may make? What is your system of statements of delay?

A. They have to send regular monthly statements in which they have to explain any delays in cases which last over 3 months.

Q. With those returns are the order sheets sent in each case?

A. Yes.

Q. So, you have got good control?

A. Yes.

Q. How many cases pending for more than 3 months are there in the Sub-Divisional Court at the present time?

A. There are only about half a dozen.

Q. In the Township Courts?

A. About 30 or 40.

Q. That is for 3 Townships?

A. Yes.

Q. Of these, how many are pending for over a year?

A. Perhaps 3 or 4.

Q. Have you noticed our question in the questionnaire with regard to registered addresses? I think it is No. 29.

A. I think I have replied that it will be very desirable and advantageous if the system is tried tentatively.

Q. Do you think you will find it feasible and easy in Burma? Would people be ready to give information of any changes in their addresses?

A. I am afraid they would never do that.

Q. So you think it will be rather difficult to start that practice?

A. The only thing is that if they give registered addresses they must take the consequence of processes issued to those addresses being treated as duly served.

Q. I think you have got many non-Burman residents in Burma? Are they more or less settled in Burma.

A. We have a large number of Indians and Chinese.

Q. Do they not go back to India or China, as the case may be?

A. No, Sir, they are more or less settled here.

Q. Do you think there is considerable commercial work in Burma?

A. I should not say that there are not many commercial cases outside Rangoon. We have the ordinary type of cases such as mortgage suits and suits regarding promissory notes, but not really commercial cases.

Q. So there is no difficulty with regard to commercial cases outside Rangoon?

A. No, Sir.

Q. How much criminal work have you to do?

A. I should say my criminal work is heavier than the average work of a sessions judge.

Q. Do you think criminal work takes away half of your time?

A. Yes, I should think so.

Q. Have you got many original suits to try as district judge?

A. Not very many.

Q. Is not Amherst a heavy district?

A. Personally I do not think it a heavy one.

Mr. Dunkley.—One of the heaviest.

A. It is supposed to be. I have no experience of other districts.

Sir T. Desikachari.—*Q*. May I interrupt. I see from the report for the year 1922 that of the district courts the biggest decrease was in Amherst where the pending cases decreased from 101 at the end of 1921 to 27 at the end of 1922—a fall of 74. Do you know why there was such a big decrease?

A. It is rather difficult for me to answer that question. Perhaps that was at the time when I was Divisional Judge and I cannot tell you the reason.

Q. I see that of these 74, 43 were transferred to other courts, so that the net reduction in arrears amounted to 31—a very creditable result. Will you just tell me who was responsible for this creditable result?

A. I think it was my predecessor.

Mr. Justice Stuart.—*Q.* May I ask you a few questions about petition writers? Do you think they are necessary?

A. I think they are necessary because there are large number of litigants who cannot afford to engage pleaders.

Q. Surely there are third grade pleaders who do not charge very much?

A. But petition writers charge even less than what pleaders charge and naturally litigants go to them.

Q. Have you found in Amherst that petition writers are fairly respectable and responsible people?

A. So far as my experience goes, I think they are responsible people. I am responsible for their appointment and I always take care to keep responsible and respectable people.

Q. Before you came to Amherst what was your experience of petition writers?

A. It was very much the same as it is now.

Q. Are they honest men? Do they not deliberately foment litigation or fabricate false suits?

A. I cannot say that they foment litigation or fabricate false suits.

Q. Do they act as touts for pleaders?

A. I have never heard that they did so.

Q. I see you are in favour of full examination of parties before the framing of issues?

A. I am.

Q. As a district judge, you do that yourself and examine them fully?

A. I do not examine them fully because in most of the cases I have very expert pleaders and advocates in front of me and with their help I frame issues.

Q. Have you got a very good Bar?

A. Yes.

Q. What is your opinion with regard to fixing of dates by subordinate judges? Do you consider dates are fixed intelligently? Do you think they fix more work than they can conveniently get through?

A. I am afraid they fix more work than they can cope with. They fix cases which they cannot do and that is the general practice followed here.

Q. Have you done anything to stop this practice?

A. There are three township courts in my district and there was one township judge who used to fix more cases than he could conveniently do. I have pointed out to him not to do it in future.

Q. What was his excuse for doing this?

A. The reason was that he fixed dates which suited the Bar.

Q. Is that a common reply from judges on that point?

A. Yes.

Q. Don't you think it would be very much better to judge the work of the Judges by the fewness of adjournments instead of by the duration of cases?

A. Yes. I think so. That will be a fair test.

Q. A man who can easily get through a case with 3 adjournments must be a better business man than a man who gives 9 adjournments.

A. Yes. I quite agree.

Q. What is the nature of cases tried by Township Judges? Are many of them small money suits on promissory notes?

A. Yes, and also money suits for rent, and suits with regard to encroachment and boundary disputes.

Q. In the case of boundary disputes, do you get good maps?

A. Yes. They are fairly accurate.

Q. Do you employ commissioners to make local inspections?

A. As a rule with the sanction of the Deputy Commissioner we get one of the people from the office of the Superintendent of Land Records who are experts in the business.

Q. What do you call him?

A. He is called a revenue surveyor.

Q. Is he a wholetime Government servant?

A. Yes.

Q. You find that they don't waste their time and that their work is satisfactory.

A. Yes.

Q. Do they get any fee?

A. They have to take the sanction of the Deputy Commissioner to take any fee.

Q. Are you in favour of their getting a fee so that they may take more interest in the work?

A. Yes. It is outside their usual line of business.

Q. How many appeals have you in a year?

A. Something about 150.

Q. I suppose you dispose of them fairly quickly.

A. Yes. I am fairly quick with them.

Q. You dispose of them within 6 months after institution.

A. Within 6 weeks provided the process is served. As a rule the service is effected within a week.

Q. I understand that your process-servers do not do only the work of civil courts.

A. Yes. They are also revenue process-servers.

Q. Do you find the latter fact a great drawback in the way of superintending their work?

A. Yes. I cannot superintend their work because they say that their time is occupied with revenue processes.

Q. But if you can get your cases decided, apparently almost invariably, within 3 months after institution the process-serving cannot be very bad?

A. It might be better.

Q. But is the delay worth complaining about? If a case is decided within 3 months after institution, is there anything to complain of?

A. Some people think that they ought to get their cases decided within 3 weeks.

Q. Could you do anything more in cases in the Sub-Courts so that they may be heard *de die in diem?*

A. They are supposed to do so. But they find it difficult. If a case is not decided and, the court wants it to go on the next-day; the pleaders generally want an adjournment.

Q. You cannot ask them to try to make a proper estimate and make them understand that it is really a very serious matter bringing witnesses to court and then sending them away?

A. Personally I find no difficulty in my own court and I always ask the other courts to go on with the case *de dic in diem* as I do.

Q. Of course you must allow for the difficulty of the criminal cases which come unexpectedly and hold up the civil work.

A. Allowance has to be made for that, but the township judge has usually no criminal work to do. The sub-divisional judge has criminal jurisdiction but he is primarily a civil judge and he is supposed to take up the criminal cases in his spare hours.

Chairman.—*Q.* Does he sometime find that a policeman, while he is sitting and trying civil cases, turns up with three or four witnesses and he has to tackle them?

A. He never does that. As a matter of fact it is very rare that the police, the accused and the witnesses all come together. As a matter of fact the witnesses do not come though they are supposed to come and he simply fixes a further date for hearing.

Q. Supposing it turns out that a case has taken up rather longer than was expected. Is it practicable for him to take it up the next day? Does his next day's list, which he has to fix in advance, permit him to go on with it *de die in diem* without inconvenience to other people?

A. It is quite possible for him to go on with a case *de die in diem* in these circumstances.

Mr. Justice Stuart.—*Q.* In some cases he may tell them a day before instead of waiting till the end. Supposing he finds that on Monday he wants to go on with a case he can send a notice to the pleader on Saturday—say at midday—asking him not to bring his witnesses on Monday. He can do that?

A. May I suggest that an ordinary Burmese judge does not take that responsibility on his own shoulders. He wants to wait till the last moment and in some cases the witnesses have been kept waiting till 4 o'clock in the evening because he does not know whether he can or cannot take up the case.

Q. Then there is nothing wrong in the system itself. It is in the personality.

A. Yes. In cases where the advocates appear it ought to be arrangeable between the judge and the advocates.

Q. Have you any suggestion to make in respect of restricting the right of appeal or do you think that you will leave it as it is, in Burma?

A. I think I will leave it as it is.

Sir T. Desikachari.—*Q.* What do you think about increasing the small cause jurisdiction of subordinate courts? Do you think that Burma is ripe for that?

A. I do not think so.

Q. In regard to village courts do you think that Burma is a good field for honorary work?

A. I am afraid I have no experience. It is very difficult for me to say anything about the village headman or his work as a judge.

Q. You know that an Act was recently passed and a committee was going to be associated with the headman and their jurisdiction has been raised to fifty rupees. I suppose you have no experience of their work.

A. I have no experience.

Q. Would you look into Question 85, about giving powers to the court to refer certain class of cases to referees. You were referring to suits relating to boundaries; what do you think of referring such suits to arbitration, that court having power to say that this suit must be decided by certain arbitrators?

A. I do not think that will satisfy the public.

Q. Do you think that there is any class of cases that can be referred in that manner to referees?

A. I think commercial suits may be referred to commercial experts. For instance, suits dealing with breaches of contracts—say suits relating to a particular quality of Burma rice—may be referred to arbitration. These suits are always governed by special conditions and it seems to me that they are better triable by those who deal in that particular trade.

Q. Any other class of cases—I shall give you a list which I have made from the evidence of some of the witnesses. Cases of adoption—can they be referred to arbitration?

A. I do not think so.

Q. Divorce?

A. Certainly not. This ought to be decided by a law court.

Q. With regard to partition of agricultural land......

A. That would be more fitted to be referred to referees because the court is not in a position to inspect and a commissioner may be appointed who will be of great value.

Q. Would you like the Codification of any branch of the Burmese Buddhist Law?

A. I think from the point of view of the people and for their benefit, it will be better that the Burmese Buddhist Law should be codified.

Q. You find many conflicting decisions and a certain amount of uncertainty and you will prefer definiteness?

A. Yes.

Q. What branches of law should be codified?

A. Adoption should be one of the branches. It is very difficult to codify the law of marriage, but there is no reason why the law of inheritance and law of gifts should not be codified.

Q. I see that a body of opinion in this province is in favour of the power of executing a will being conferred on the people.

A. According to the law, as it stands at present, the Buddhists have no right to make a will. I do not see how that power can be conferred.

Q. Have you got many *benami* transactions here?

A. We have a reasonable number.

Q. Would you have some rule which would stop *benami* transactions altogether?

A. The *benami* transaction which is put forward is very often a genuine one. I do not see that there is any real difficulty.

Q. Is it not usual here that people place their property in the name of others pending execution and afterwards put forward the plea that the transaction was never intended to be acted upon?

A. It is very often the case here that people place their property in the name of their relatives or friends, but it is very rare that any claim is put forward to the properties. They prove faithful to the trust and do not try to deceive.

Q. With regard to partitions of immovable properties, would you like to have them registered?

A. I think it will be advisable. There are any number of disputes with regard to alleged partitions.

Q. That would prevent a lot of oral evidence being let in in courts?

A. Undoubtedly.

The NATTUKKOTTAI CHETTYARS' ASSOCIATION.

Written Statement.

Duration.

So far as the Rangoon small cause courts are concerned work gets on fast enough. Adjournments are not granted as a rule and costs of adjournment are invariably demanded and awarded, which seem to operate as a fairly effective check on asking for adjournments unnecessarily. There is, however, one defect generally in the small cause courts which seems to require attention; that is, posting of too many contested cases for each date, with the result that several cases that are ready have to be adjourned for want of time, and parties and witnesses are put to needless expense and trouble.

The duration in the township, sub-divisional and district courts is not abnormal, except that here also there is a tendency to post too many cases for each day, with similar inconvenient results to parties and witnesses.

In the High Court, however, duration is generally long. One fact has to be admitted, namely, that the Hon'ble Judges are extremely hard worked and an increase in the number of Judges is an urgent necessity. In the High Court the most provocative cause of delay is the inadequately staffed translation department. This should be strengthened and thoroughly re-organised. The duration in insolvency matters is abnormally long and this stands in need of urgent reform.

Generally, in all the courts, the process-serving department is in need of root and branch reform. The present staff is extremely corrupt and should be replaced by a superior type of men on higher pay and the men should be kept up to the mark by stern discipline and vigilant supervision.

Concentration of many civil courts in one place is certainly another provocative cause of delay in Rangoon, especially in the present state of the local bar, most of the work—at any rate, important work—is in the hands of a few legal firms and this seriously hampers the work of the judicial officers. Of course, the clients are anxious to secure the best legal talent to advocate their causes and this is a very legitimate feeling which has to be treated with consideration. In Rangoon, another contributory factor for delay is the proximity of the police courts, check by jowl with the High Court. The shifting of these to a place far away from the High Court and closer than at present to the areas which furnish the criminals—say, Taroktan—would prevent members of the local bar from accepting all work that comes in their way irrespective of their capacity to adequately do justice to their work. Also, lawyers would specialise in one branch of the law, which would help in the disposal of work with greater expedition.

Recruitment.

Except in the High Court and with some rare exceptions in the subordinate courts, the judiciary in Burma is amateurish. The township and sub-divisional judges are ill-paid. These should be recruited from legal practitioners of at least 5 years standing with the B.L. Degree and possessing the additional and indispensable gift of a good and commanding personality. Promotions to higher judicial offices should not be by the present rule of thumb of strict seniority. Life, under eastern conditions, wears away rapidly and outstanding merit rarely comes up to the top, unless blessed with longevity and robust health, so that it is absolutely necessary that selection should have precedence over mere seniority in the matter of promotions.

Jurisdiction—Enhancement, etc.

A city civil court with jurisdiction up to Rs. 5,000 may be established at Rangoon on the basis of the Madras city civil court to deal with matters outside the scope of the small cause courts and now dealt with in the High Court.

Sub-registrars may be invested with jurisdiction in small cause matters up to a limit of Rs. 100 for the present which may be increased to Rs. 200 in the light of experience of its working.

The jurisdiction of selected township judges may be increased to Rs. 2,000, and of selected sub-divisional judges to Rs. 7,500.

Benami Transactions.

My Association is generally opposed to the matters referred to in Questions 57 and 76 to 81. *Benami* transactions are as common in Burma as in

India. The Registration Law is certainly wholesome, but its rigid insistence in all cases irrespective of the circumstances surrounding each case is bound to operate harshly on the ignorant and the illiterate. The doctrine of "part performance" as an important principle of justice should continue to be recognised. In fact, as between parties to a transaction or their privies, non-compliance with statutory formalities should be no defence or ground for invalidation. Registration Law has certainly to be respected and registration of all documents may be encouraged by providing that a party shall not be entitled to costs, even if successful, incurred in proving an unregistered document. In all cases, when executants are illiterate attestations should be insisted on.

Examination of parties, discovery and inspecting of documents, admissions. etc.

Except in the High Court, parties are rarely examined before settling the issues with the result that very often the issues are prolix, and unsubstantial and immaterial averments in the pleadings get mixed up with real questions at issue. It is, therefore, necessary that courts should insist on the attendance of parties at the settlement of issues. My Association is, however, opposed to the proposal that both parties should be *fully* examined before other witnesses are summoned, as this might seriously prejudice a party thus compelled to disclose his evidence at that stage. The rules as to discovery, inspection, admissions, etc., are not much availed of in several of the subordinate courts. The insistence of the trial courts as to these would have the effect of remarkably narrowing down the points on which the parties are at variance. As to oral evidence, the courts should fully exercise their power of disallowing irrelevant questions, but the fixing of a time limit for the examination and cross-examination of witnesses is bound to operate harshly.

Affidavits.

These are certainly excellent devices for saving the courts' time, but their scope is, by their very nature, limited to uncontested matters only. There is also this feature in an affidavit, that a deponent may perhaps take the oath in respect of an affidavit much more easily than with the sense of awe and solemnity which oral examinations may bring on a witness facing a public court.

Appeals and Revision.

The right to these is often abused with the object of gaining time or obtaining stay of execution. For second appeals in money suits deposit of the decretal amount may be insisted on in all cases below Rs. 1,000 as a condition precedent, whilst as regards immovable property second appeals should be admissible on good grounds irrespective of limit.

Execution and stay thereof.

My Association is generally in favour of the matters referred to in Questions 53 to 60 and 61 (*a*). The second proviso to Rule 16 of Order 21 need not be deleted or modified. The present rule as to interim stay provided for in Order 21, Rule 26, should be retained. Stay of execution should be granted by the trial court only, as the appellate court will not be in a position to realise the exact situation in the manner the trial court can. In fact Rule 13 of Order 45 strongly supports the above view.

Codification.

My Association is of the opinion that the Hindu, Muhammadan and Buddhist Laws are not capable of codification, that codification is never likely to set at rest all matters governed by these laws and that the courts will still have to go to sacred texts and decided cases before coming to a correct judgment on the matters before them.

Multiplicity of law reports.

There are not many unofficial law reports in Burma, but they are numerous in India. My Association is of the opinion that some control and restriction is necessary and that the Rules Committee in each province may be entrusted with the duty, if not of stopping any law reports now being published, at any rate to examine the desirability of any further additions, and also to exercise some sort of control over the publications in each province so as to guarantee to the judicial officers and the public the authenticity and correctness of the cases and rulings contained in the reports.

Mr. T. J. NAGGAPA CHETTIAR, Representative, Nattukkottai Chettyars' Association, Rangoon, called and examined on Wednesday, the 14th May 1924.

Sir T. Desikachari.—*Q.* Have you got many suits on the Original side of the High Court?

A. Yes.

Q. Are they suits of large value?

A. Yes.

Q. Are there also small suits on the Original side of the High Court?

A. Yes.

Q. Do you think there is quite a large proportion of suits of small value on the Original side of the High Court, I mean suits of the value of less than Rs. 1,000?

A. Suits of higher value are greater in number.

Q. I find that nearly three-fourths of the cases in the High Court are cases which are less than Rs. 1,000 in value?

A. May be.

Q. I put you this question for the purpose of getting your views as to whether you are in favour of a city civil court being instituted here.

A. If a city civil court is established it will considerably reduce the work of the High Court.

Q. Perhaps you know that the city civil court in our province is working all right?

A. Yes, I know that.

Q. If a city civil court is established, do you think your community and the merchant community in general in Rangoon would welcome it?

A. Yes.

Q. Have you got many suits in the Rangoon Small Cause Court?

A. Yes.

Q. Is there very much delay in the disposal of suits there? Do you think that parties are asked to come again and again?

A. Many cases are fixed for a single day and delay occurs on that account.

Q. How many times has a person to come to court with his witnesses before his case is finished?

A. Four or five times.

Q. In interval of how many days?

A. Two or three weeks.

Q. What is the reason? Do you not make any representation to the judge that longer dates may be given?

A. As we are anxious to get our cases decided early we, of course, prefer to have short dates. We make no representation.

Q. On the whole the duration of small cause suits in this small cause court does not appear to be long?

A. Generally cases are dealt with expeditiously in the small cause court.

Q. And the duration is reasonable?

A. Yes.

Q. There are appeals against the decisions of the small cause court in suits to the value of Rs. 1,000 to the High Court?

A. Yes.

Q. Would you like these appeals to be disposed of by a bench of small cause court judges?

A. If that is done it will be much better.

Q. Do you know that is the case in Madras?

A. I am not aware of that.

Q. You would prefer to have your appeals decided by these benches instead of going to the High Court because there the time taken is very long?

A. Yes.

Q. You say that in the High Court delay is due to translation of documents not being done speedily?

A. That is one of the reasons.

Q. What is the reason? Has the High Court to do a lot of other work?

A. The High Court has also to do criminal work and there is a lot of work there. That is the reason of the delay that occurs there.

Q. And that is also one of the reasons why a city civil court should be established?

A. Yes.

Q. Then you complain that there is lot of delay on account of infructuous proceedings in insolvency matters?

A. Yes.

Q. Will you explain how this delay occurs?

A. The petitioning debtor has more facilities than the creditor. I cannot explain why the debtors have more facilities on the insolvency side. This is so not only for the Chettiar community but also generally for all creditors. If a proper official assignee is appointed, this sort of delay will not occur.

Q. I suppose the present official assignee or any other assignee under the present system holds 3 or 4 offices. Is he the Administrator-General?

A. I don't know.

Q. You say the debtors are more favoured. Have the creditors used the provisions of the Insolvency Act in any way and were they obstructed by the official assignee?

A. We have done what we could, but still there is delay. Nobody takes any notice.

Q. You receive no encouragement from the hands of the official assignee?

A. No.

Q. I suppose the work is more or less done by the official assignee's office rather than by the official assignee.

A. If the official assignee is all right, the office also will be all right

Q. Have you anything special to state except the appointment of a proper official assignee, in connection with insolvency matters?

A. No.

Q. You say that the duration in insolvency matters is abnormally long and this stands in need of urgent reform. What is the kind of urgent reform that you want except that you want a change in the personnel?

A. I can suggest nothing special as urgent except the change in the personnel.

Q. You say that the present staff of process-servers is very corrupt.

A. Yes. Everybody says that.

Q. Is it the universal opinion that the present process-serving staff is corrupt?

A. Yes.

Q. What is the remedy against the prevalence of this corruption?

A. Suitable men must be appointed on adequate pay and they must be kept under proper supervision.

Q. Are they not under proper supervision now?

A. We have to infer from the present staff of process-servers that there is no proper supervision.

Mr. Dunkley.—*Q*. Has it been any better after the appointment of a registrar in the small cause court?

A. There is no change. They are behaving just in the same way.

Sir T. Desikachari.—*Q*. I should like to know what is their usual behaviour. Do they exact money from litigants?

A. They do take money from litigants.

Q. You must have many suits and you must have had many processes served. Is it within your experience that these people are demanding money?

A. Without payment of money nothing will be accomplished.

Q. Some of the process-servers have become very rich men.

A. There is not a single process-server who does not take money.

Q. Have you at any time represented to the higher authorities about this corruption?

A. If we report to the higher authorities, our business will not be done.

Q. So, you pay the money to get on with your work?

A. We have to get our work done and so we get on with the present system.

Q. In what way do you pay the money? Is it for the serving of the process or for having the man arrested or for getting the property attached? For what purpose do you pay the money?

A. Any work that a process-server has got to do has to be accomplished only by paying money. It is not only for Chettiars but also for other litigants in Burma.

Q. I suppose your Nagarathars have got places of business in almost every district in this province?

A. Yes.

Q. You speak from your experience of the whole province when you make this statement?

A. By experience and also from reports.

Q. Notwithstanding all this corruption, business seems to go on fairly speedily?

A. It is the money that does the thing.

Q. So, the speed in the despatch of your business is due to the expenditure of your money?

A. Not only for Chettiars, but for everybody.

Q. You are complaining that the concentration of too many courts in places like Rangoon causes delay. How is the delay caused?

A. There are not many big lawyers in Rangoon.

Q. It is the want of lawyers and not the concentration of courts that is at the bottom of the delay.

A. There are only some legal firms which can be entrusted with work and they take up work in all courts because the offices are near to each other.

Mr. Dunkley.—*Q.* What courts would you like to turn out?

A. Police courts could be removed.

Sir T. Desikachari.—I suppose one portion of the city provides civil cases and another part criminal cases?

A. Yes. Taroktan is the hot-bed of criminal cases.

Q. You will have the police courts located away from the civil courts?

A. It will be very much better if the police courts are far away from the High Court.

Q. That would prevent the members of the bar taking up both civil and criminal cases?

A. Yes.

Q. You think you will have one set of lawyers specialised in civil cases and there will be less delay and it will be more convenient to merchants?

A. Yes.

Q. Have you not got here a set of lawyers specialising in police courts, another set specialising in small cause courts and another set in High Court?

A. It is not so here.

Q. With regard to recruitment you were saying that excepting the High Court judges the judiciary in the subordinate courts is amateurish. I suppose they are not trained lawyers.

A. They are not men well versed in the law.

Q. Are their decisions not satisfactory?

A. Not very satisfactory. Not having the necessary learning their judgments are not very satisfactory.

Q. Are you a lawyer yourself?

A. I am not a lawyer.

Q. But you are saying that they are not lawyers. How are you in a position to know that?

A. A mere clerk is appointed as a township judge and we know with what knowledge he starts.

Q. I can see your complaint with reference to the capacity of these judges. What about their honesty?

A. You can think of their integrity having regard to the low pay that they receive.

Q. In making the selection you want that people with B.L. Degrees and five years standing and possessing an additional and indispensable gift of good and commanding personality should be taken. What do you mean by that?

A. He must adorn the seat and must be able to impress and look dignified. If they have B.L. Degrees and have practised for five years it does not matter very much if they lack in personality.

Q. Your opinion is that promotion is given by strict seniority?

A. Yes.

Q. You think that ought not to be the rule?

A. Yes.

Q. People who are absolutely honest and who have capacity must alone be promoted?

A. Yes.

Q. What means have you to know that promotion is made by seniority?

A. We see by experience. We do not see any person who has been on a small appointment suddenly holding a big appointment.

Q. What do you think of the suggestion that the jurisdiction of the township court may be raised to two thousand rupees and that of the sub-divisional court to seven thousand and five hundred rupees?

A. Their pay may be increased and their jurisdiction may also be increased.

Q. You think that selected people might be invested with enhanced jurisdiction?

A. Yes, selected judges only.

Q. You say that your association is opposed to *benami* transactions—what sort of *benami* transaction?

A. It seems to think that *benami* transactions in Burma exist to the same extent as they exist in India and no legislation is necessary.

Q. With regard to appeals and revision you think that in case of appeals stay of execution is granted on insufficient grounds?

A. Yes.

Q. And that in second appeals the deposit of the decretal amount may be insisted on in all cases below Rs. 1,000.

A. Yes.

Q. With regard to immovable property, what is your opinion? I think no such condition is necessary?

A. No such condition is necessary with regard to immovable property.

Q. With regard to stay of execution would you like stay to be granted by the trial court or by the appellate court?

A. The trial court should have the power of granting stay of execution.

Q. Why?

A. Because the appellate court would not be in a position to realise what are the exact points.

Q. Have you got anything else to say? I have gone through your memorandum.

A. I have nothing else to say.

Dr. DeSouza.—*Q*. What sort of business do Chettis do here? Firm business or individual concerns?

A. There are more individual concerns than firms.

Chairman.—*Q*. Are not these businesses family businesses very often?

A. Yes. Many businessses are family businesses.

Q. Most of them?

A. Most of them are joint family concerns.

Q. That is, you get contractual partnerships, family businesses as well as individual concerns and so on?

A. Yes.

Q. Can you tell what it is by merely looking at the names?

A. No.

Q. Are there not many businesses under the Limited Companies Act?

A. None.

Dr. DeSouza.—*Q*. Is there any difficulty in serving processes upon these firms in Rangoon or elsewhere?

A. No.

Q. I understand from the report of one district judge that considerable difficulty is experienced in serving summonses upon firms, that persons in charge are not authorized agents of the firms, that they refuse to accept service and that notices or summonses are returned unserved?

A. The difficulty is that process-servers do not understand who is the person in charge of the business.

Chairman.—*Q.* You know that appeals against the decision of small cause courts lie to the High Court?

A. Yes.

Q. Can you tell us whether these appeals are heard by one judge or a bench of judges?

A. One judge.

Q. Have you any experience of benches of small cause court judges? Do you know how they would work?

A. I have no experience of any bench of small cause court judges. But if appeals are heard by a bench of small cause court judges that will be very satisfactory.

Q. You say that it will be satisfactory, but do you know how this system is working in Madras, Bombay or Calcutta?

A. No. I do not know, but as there is a lot of work in the High Court, I think a bench of small cause court judges would be able to dispose of appeals very much quicker.

Q. Supposing the time is the same, which of the two would you prefer?

A. If the duration is going to be equal in both the cases, I would prefer the High Court.

Q. If a bench of small cause court judges sits to try a small cause court appeal to-morrow, how can you know that it will take less time than the High Court?

A. If addition is made to the number of small cause court judges, that would expedite matters.

Q. Why not some more High Court judges?

A. I have already said that one additional judge will be very satisfactory.

Q. How many small cause court judges are there now?

A. Three.

Q. The third judge is rather of a different type. Only two small cause court judges would be likely to be doing cases over Rs. 1,000.

A. Yes.

Q. You won't constitute an appeal bench of two judges.

A. No.

Q. You said something about a city civil court. Has your association ever made a representation in favour of a city civil court?

A. Our association has been started only recently.

Q. There is an appeal now to the High Court from the small cause court in suits of over Rs. 1,000. Why do you want to make a third court? What is the point?

A. If the city civil court is established, it will be able to try matters relating to immovable properties and this would effect a lot of saving in the High Court's time.

Q. Why do you want a different court? Why should not the small cause court try the suits relating to immovable property also of the value of Rs. 1,000, with a right of appeal to the High Court?

A. We have heard that in Madras the city civil court is doing very good work. If the small cause court here is empowered to do this additional work also, it will cause delay in the work of the small cause court.

Q. Could you tell me what should be the salary of the judge of a city civil court?

A. I have no opinion to offer.

Mr. Chari.—*Q.* Do you think the city civil judge will have to get as much as the first judge of the small cause court?

A. Yes. That will be so.

Mr. Justice Stuart.—*Q.* Have you any experience of the work in Madras?

A. I have no personal experience; my impression is based only on reports.

Q. Have you lived in Madras?

A. I have lived there only for a very short time.

Q. Will you be able to tell us whether process service in Burma is in any way worse than in Madras?

A. The Madras men are no better than the Rangoon men.

Mr. A. S. GILBERT, I.C.S., District and Sessions Judge, Tharawady.

Written Statement.

6. Yes. I take as an illustration the transfer of the Additional District Judge (who does the bulk of the miscellaneous business of this court) to another station. He left on February 26th and his relief did not arrive till March 10th. The consequence was that (as I was occupied with sessions) the numerous cases fixed for that week had to be postponed. Moreover, a change of judge involves waste of time because the new judge has to spend much time studying the often complicated problems involved in the suits he takes over. In my opinion a judge should normally be left two years at one station.

7. Supervision by the higher courts is the only way of ensuring efficiency. Some judges are naturally slower than others. I do not think that any fixed standard is practicable, regard being had to the great variation in the intellectual capacity of judicial officers, and the classes of cases which come before them.

14. I am of opinion that much use might be made of village arbitration courts; honorary magistrates have been most successful in this district and I see no reason why local benches should not be given exclusive jurisdiction in suits up to Rs. 100.

28. One of the principal causes of delay is the difficulty in getting notices and summonses served. I am of opinion that service could suitably be effected by registered post, the name and nature of the suit being noted on the envelope. Also, village headmen might suitably be employed to serve processes. They should, of course, be given fees for this service. A signed declaration by the headman that he has effected service should be adequate proof of service. Plaintiffs should be given the option of effecting service (1) by process-server, or (2), by post, or (3) by the local village official, or (4) by any or all of these methods *combined.*

35, 36. I suggest that parties should be allowed to *tender* witnesses for cross-examination. Also, witnesses should be allowed to swear an affidavit outside the Court and this affidavit should be accepted in evidence; the witnesses could then be cross-examined on their written statements. But the substitution of an oral examination for the putting in of an affidavit should be within the court's discretion. This procedure would save a vast amount of time. I do not see why such affidavits in proof of a claim should not be put in with the plaint. At the appearance for framing issues, the defendant could indicate which of the persons making such affidavits he desired to call for cross-examination.

37. If affidavits or written declarations be substituted for the bulk of the examination-in-chief of witnesses a time-limit can be fixed for supple-

mentary questions which plaintiff desires to put. It seems almost impossible to fix a time-limit for cross-examination, unless the parties can be persuaded to fix this *by consent* at the beginning of the hearing.

49. There is no doubt that suits are not tried continuously day by day in all courts. One reason for this is that some civil judges are also magistrates. The combination of district and sessions judge is unsatisfactory. The arrangement formerly obtaining in this province—divisional and sessions judge—was, in my opinion, better. I think that (if speedy disposal of suits be taken as the criterion) the sessions judge should, as a civil judge, do only appellate civil work. Sub-divisional judges should not, I consider, be magistrates, for the same reason. Another reason why cases are not heard from day to day is that a busy judge has to fix for each day more cases than he can really hear out, in the expectation (often realized) that one or more of these cases will fall through (compromise, substitution or addition of parties, etc., producing this result). The work in the mofussil court tends to come in " rushes "—to get through it the judge has to spread it out, finishing the shorter cases as speedily as he can to keep his durations down. But, of course, the main factor preventing the hearing of cases from day to day is the absence of witnesses.

The ways of enforcing the rule are (1) that a civil judge should have no criminal or other non-civil work, (2) the parties should be given a limit of time in which to produce their evidence and no extension of this time should be given. (My experience of the courts of this country is that the parties, rather than the courts, are to blame for the long duration of cases.)

72, 73, 76, 80. These suggestions appear sound, and would certainly tend to reduce durations.

87. The codification of Burmese Buddhist Law is desirable.

Mr. A. S. GILBERT, I.C.S., District and Sessions Judge, Tharawady, called and examined on Saturday, the 17th May 1924.

Mr. Justice Stuart.—*Q*. How long have you been in service? I think for 18 years.

Mr. Gilbert.—*A*. Yes.

Q. How long have you been a district judge?

A. About 12 years.

Q. I think you have experience both of Upper Burma and Lower Burma?

A. No—entirely of Lower Burma.

Q. You say that township judges have too much executive work to do?

A. Yes.

Q. And this materially interferes with their civil work?

A. It takes about an hour a day.

Q. And that it is also a very disturbing factor; it not only takes time but distracts their attention from the real work?

A. Yes.

Q. I think you agree that a certain amount of criminal work must be given to them, but you take strong exception to any executive work being given to them as it seriously interferes with their legitimate duties as civil courts?

A. They do practically no criminal work. They are whole-time civil judges, but they are given treasury work.

Q. And you like it to be noted as your opinion that executive work such as treasury work interferes with the expedition of civil work if the judges are expected to take it up?

A. Yes.

Q. Is there any hope that this will be remedied?

A. Hopes were held out by the Government that under certain conditions township judges will be relieved of these duties. It was said that deputy myooks would be put in charge of sub-treasuries, but these hopes have not been realised.

Q. You think that once deputy myooks are trained for treasury work, it should be possible to relieve township judges of doing this work?

A. Yes.

Q. You have a certain amount of confidence in the capacity of headmen in villages to form village courts?

A. A committee and not the headman by himself.

Q. That is to say, you would have benches?

A. Yes.

Q. How would you constitute a bench like that? Would you have it by the election by the villagers themselves or by Government nomination?

A. I think election would be desirable.

Q. Would you give the power of veto to the deputy commissioner?

A. This should be possible if rarely exercised.

Q. Your idea is to leave it to villagers themselves subject to the approval of the deputy commissioner?

A. Yes.

Q. Do you consider the work of process-servers really very bad or only that it is not as good as it should be?

A. I do not consider it very bad, but it is far from very good.

Q. Would you remedy it by better supervision?

A. Better supervision would help undoubtedly, if an officer is available for doing that supervision.

Q. At present I understand in Burma the duties of supervision of process-servers is one of the many duties of a superior officer who has many other things to do?

A. Yes.

Q. Would it not be possible to rearrange the work so that more time may be devoted to the supervision of process-servers' work? Will you be able to find an efficient man in Burma on reasonable pay? What do you call him? Do you call him bailiff?

A. Yes. The head bailiff is at headquarters and deputy bailiffs at smaller stations.

Q. In some parts of India it has been found that a great deal can be done if the process-servers' work is looked after properly even though the process-servers are under-paid. Presumably the reason is that no body looks into these things and cares to see what the process-server does?

A. Yes.

Q. Will you be in favour of service through the post office? Do you think post offices are trustworthy?

A. I think they are more trustworthy than process-servers.

Q. Under the present conditions you think that it is very difficult, if not almost impossible, for township judges and sub-divisional judges to hear cases *de die in diem*?

A. Yes.

Q. Do you think that they cannot hear cases *de die in diem* so long as they have to discharge multifarious duties?

A. Yes.

Q. Can it not be done in a modified way that they should devote a part of the day to hear cases *de die in diem*, leaving the remainder of the day for other duties? Do you think something can be done in that way?

A. The difficulty is that they have to take up criminal cases first, if any come to their courts.

Q. I think you were first a divisional judge?

A. Yes.

Q. And are now a district and sessions judge?

A. Yes.

Q. As divisional judge could you get sufficient time for the supervision of subordinate courts?

A. Yes.

Q. And as district judge?

A. I cannot get so much time to do that work.

Q. In your experience as a judge of long standing do you feel any difficulty in keeping yourself well in touch with your subordinate judiciary as to what they are doing?

A. No difficulty at all.

Q. And in these circumstances you think that it is not necessary to lay down specific rules that supervision should be exercised more often?

A. No.

Q. When people are appointed for the first time as district and sessions judges, do you think they understand their work? Do you think they pick up the work fairly quickly?

A. Yes. They pick up work fairly quickly.

Q. Are you satisfied with the subordinate judges in Burma?

A. Yes.

Q. You think they are reasonably efficient and reasonably honest?

A. I think so.

Q. Is not the smallness of the pay a drawback?

A. It is.

Q. Do you think that on that small pay you can attract the right class of men?

A. I think the prospect is encouraging. They hope to rise some day to additional district judgeships.

Q. I believe in Burma you have got touring courts. One township judge has got jurisdiction in two or three townships and I think he is going from one to the other. Does that work well?

A. I am against that system entirely.

Q. Why?

A. He cuts up his work and wastes the time entirely. He has to allot a week or 10 days to each place. He cannot divide the work equally.

Q. Would it not be an improvement if you have a permanent officer in each township like that of a registrar in a county court, before whom suits would be filed and who will attend to the preliminary stages of the suits, and who will dispose of even uncontested suits and just prepare a programme of contested suits and have them ready on the arrival of the touring officer? I don't suggest that would be possible. I only want your opinion.

A. If it were possible, I think it will solve the problem.

Q. Will there be any officer in the township who could do that work?

A. I don't think there is.

Q. What of these deputy myooks?

A. The township officer is on tour for 20 days in a month and there can be no supervision.

Q. Are not these townships small places, not more than villages?

A. Yes.

Q. Do you think that small cause court powers can be given more freely than they are at present? Do you think the subordinate judiciary are competent to exercise more small cause court powers than they do now?

A. I don't think more powers could be given to them.

Q. Is there any judge in your district exercising small cause powers up to Rs. 500?

A. None in my district.

Q. Do you think it could be given to any of your officers, to speed up the work?

A. I don't think that any township judges could be empowered at present up to Rs. 500.

Q. Would you object to giving small cause powers to sub-divisional judges?

A. No.

Chairman.—*Q*. In that case I think that class of litigants would have to go further than if they go to a regular court before a township judge?

A. Yes. That is one of the difficulties.

Q. I think communications are very bad in Upper Burma?

A. They are bad even in Lower Burma.

Q. I think they are worse in Upper Burma?

A. Yes.

Q. So, that is a much more serious obstacle than it is in most parts of India. The litigants have to go long distances?

A. Yes.

Q. I think the travelling is not only very inconvenient but also expensive?

A. It is so.

Q. From the way in which the presiding officers do their work, do you think they exercise any intelligence in their work?

A. I think they do on the whole.

Q. Don't you think that far too much work is fixed for one day than they could get through?

A. I think they distribute it very reasonably on the whole.

Q. You don't think the people have got a real grievance on that point—a man having to come to court 2 or 3 times with his witnesses and going away because the court could not find time to take the case?

A. No. If it occurs at all, it is not due to the fault of the judges. The judge has to do criminal work also.

Q. You mean something unexpected turns up which he could not foresee.

A. Yes.

Q. Have you had much trouble over commissions to examine witnesses in India?

A. Yes. They take a very long time.

Q. Have you been held up yourself?

A. Yes, from 50 to 100 days when the commissions go to India.

Q. Can you easily hope to get them back in 100 days?

A. Yes.

Q. I saw a commission sent to a pleader at Calcutta which took more than a year. I suppose you have not had cases as bad as that?

A. No.

Q. Can you suggest any practical improvements in execution?

A. I don't think I can suggest any on a large scale.

Q. Do you think that individual attention is given to execution matters by the judges or are they left to clerks?

A. I think the judges themselves pay attention to it.

Q. What I want to know is that whether, after an execution petition is put in, the office is tending to delay it?

A. I think, if proper care is taken, there is no delay.

Mr. Justice Stuart.—*Q*. Do you consider that it is a good thing that the Transfer of Property Act has been introduced in Burma?

A. Yes.

Q. Are Burmans relying more and more on contracts being put in writing?

A. There is a very slight improvement, but there is improvement I think.

Q. Are you in favour of codification of parts of Buddhist Law or the whole of Buddhist Law?

A. I think some parts can be codified—inheritance law for instance.

Q. You are in favour of codifying the law of inheritance. Are you in favour of requiring that adoptions be evidenced by registered instruments?

A. I do not think I am in favour of that. It will work more hardship and it will take people some time to get accustomed to it.

Q. You need not bring it into effect at once. You might give a couple of years within which steps might be taken to acquaint the people with what is proposed to be done.

A. If that is done it will be useful.

Q. Can you make second marriages or third marriages valid only if registered at the time?

A. It might affect Burman sentiment. The registration of marriages would be a novel thing.

Q. You would not even apply that in the case of a second marriage? I do not mean the marriage of a widower but the man who has got his first wife living. It gives rise to a lot of litigation.

A. Yes, it does. It would be convenient if it could be registered, but I think the idea is alien to Burmans.

Q. Do you think that there will be very violent opposition?

A. I do not think that there will be very violent opposition. Keeping of two wives is unpopular.

Q. If that is so then most of the claims are false?

A. A great many—two-thirds—are false. That is my experience.

Mr. Dunkley.—*Q*. Mr. Justice Stuart wanted to know whether any township court could be given increased small cause court powers. Would you be in favour of conferring extra powers on selected officers only?

A. Yes.

Mr. P. K. ROY and MAUNG TUN WIN, Representatives, Moulmien Bar Association.

Written Statement.

2. In our district, except in some few cases, the courts generally dispose of cases within a reasonable limit of time. The main cause of the delay if any is the granting of too many adjournments; (1) some times at the request of parties or for heavy file and (2) not seldom for process-servers not serving processes in time.

7. Standard of efficiency in a judicial officer should be tested by really sound work and not by quick disposal of cases.

8. No.

9. No.

12. District judges in Burma command more confidence than the other judges. And if some of their work is to be transferred to any other court it could only be to the court of an additional district judge of experience and ability.

13. In Burma it is not necessary because district judges in many places have not very much to do.

14. Village courts and panchayets would be useless because Government won't get good men to devote time to do such work.

18. No.

19. No.

20. No.

21. No. As that would cause hardship in many cases.

22. Yes.

23. No. At least not in our High Court.

24. No change necessary.

25. Considerable delay no doubt occurs owing to the non-service of summons. But whenever it is said that a defendant is avoiding service, the rules about substituted service are applied and if substituted service is allowed after 2 summonses have not been personally served the duration will be much curtailed. If plaintiff satisfies the court by affidavit or otherwise that the addresses are correct then the service by post could be recognised. But this form of service should only be used as supplementary to the forms now existing. In any case the courts should be given the discretion as to how far service by registered post is in each case to be declared sufficient service. I do not consider that the application of the procedure under section 106 of the Transfer of Property Act to civil suits would be suitable. It may lead to complications.

26. The forms of plaints in the Civil Procedure Code are on the whole adhered to in our district. The only penalty for non-adherence would be in my opinion that the plaint should be returned for correction. One thing should be held in this connection and that is that the forms of plaint being only an indication of the line in which plaints should be drafted any words necessary to be written for properly describing one's own case on those lines should not be rejected.

In the forms only the skeleton of the plaint is given, but they could be amplified.

27. The provisions of Orders 7 and 8 as regards pleadings are not neglected in our district and I should say in the major part of the province where there are pleaders.

28. I have already mentioned about the effectiveness of service by post. I do not think it would be feasible to use the village officials as process-servers for in many instances it would be a circuitous way to send the processes to such officials and in many instances the village officials may not like the work. But it would be a good thing if the process-servers are always directed to take the help of village officials in serving the processes.

29. Yes.

30. I agree with Mr. Darwood's views.

31. Issues are properly framed by nearly all the experienced judges. When the pleadings are clear there won't be any difficulty in fixing the issues. In my opinion there need be no new method at all.

32. The provisions of Order 10, 11 and 12, Civil Procedure Code, are not neglected at all. They are used in cases whenever necessary.

33. However much it is desirable in some cases to examine the parties with a view to ascertain what the points in controversy really are at the first stage; if this is made a general rule it may be very inconvenient to

many litigants and sometimes to courts also; as for instance in the case of a purdanashin lady or of a person who is residing rather far away from the headquarters. Purdah ladies would not like to be examined often. And then would the court wait for the issue of commission to examine such a lady or for the appearance of the person living at a distant village or town? The present rule that the parties could be examined at the first hearing when the court feels the necessity of doing so is quite sufficient. Further if such a rule is introduced many people will not file cases out of sheer disgust. So long as our courts exist, they are bound to give room to litigants both honest and dishonest.

35. No.

36. Affidavits are easily obtained. The opposite side should have a right of cross examining the deponents.

37. Time-limit is dangerous and unworkable and will have different results in the hands of different judicial officers.

40. It is not desirable. Order 22, Civil Procedure Code, is quite satisfactory.

41. No difficulty has arisen.

42. No. The existing rules of the High Court are quite enough check.

43. No. No rules should be made in this connection.

44. Yes. It is done in our district.

45. Judges themselves fix dates and no unusual delay in disposal has occurred.

46. Yes. Judges should invariably consult the pleaders.

47. In our province, not in many cases.

48. If commissions are issued to India it many times delays the disposal of suits. Commissioners should be given power to ask questions not set down in the interrogatories at the suggestion of pleaders. Interrogatories should not always be necessary. The present system has not led to any abuse.

48. Written applications supported by affidavits for adjournment will not be an improvement on the present system—(1) because affidavits are useless and (2) written applications can also be as easily made as verbal ones. Imposition of costs will have some deterrent effect.

49. Not in large number of cases. The omission is due to the facts (1) that dates are filled up and (2) pleaders are engaged in other courts. The present system works well in our District and has led to no failure of justice or harassment.

51. No.

53. Yes.

54. Yes.

55. Yes. It should be enacted that an auction purchaser in a money decree is the representative of the decree-holder.

56. The present law is good and wholesome.

57. No need of alteration. Benamidar purchasers are not uncommon and so why should they be allowed to use the law as a shield against their own fraud.

58. I am not in favour of amendment, because if only such payments are to be recognised in law many poor and ignorant people will suffer. The payment by receipt should be held to be a good payment. In many places there are no banks or Sub-Registrars and further there is no reason why payments should only be made through a bank or before a Sub-Registrar.

59. First suggestion is good.

I do not think the second proviso of Order 21, rule 16, should be deleted or modified. If deleted it would enable a judgment-debtor who is the principal debtor to take out execution against his co-judgment-debtor who might have been a surety. A modification of the rule would lead to endless litigation harassing to the judgment-debtor. (Here surety could dispute his liability.)

60. This rule is very wholesome.

61. It will be hard in many cases if deleted. It should be kept as it is.

62. There will be hardship. No modification is necessary.

63. One notice will be sufficient.

64. Writs of attachment and proclamations of sale should not issue at the same time—judgment-debtors should be given a chance to settle the terms of the proclamation, else there might be some hardship.

Service of notice on pleaders is not effective for if the pleaders have to worry about their particular clients at every stage of execution proceedings their life would not be worth living. Further pleaders are not always in touch with the clients, who once engaged them in the original suit.

67. I should say no amendment is necessary. There has been very little trouble owing to such.

71. The present law of evidence is quite good. It requires no change for the trial of suits.

72. If some of the attesting witnesses became the mortgagee's enemies it would be difficult to produce them. Plaintiff should be allowed to prove his mortgage in any way he likes. If mortgages are presumed to be valid unless proved to the contrary by the mortgagor the principle would be most dangerous and will give effect to fraud.

73. Yes.

75. Very hard to suggest a remedy.

The present law should remain with this amendment that the bailiff should get greater power to evict a refractory judgment-deb[illegible] in possession of property which he has to give up under the decree. [illegible] do not advocate speedy trial of suits. If suits are to be tried it should be to ensure justice and not for speedy disposal.

76. No. Because it would be difficult always to get registered deeds of partition.

77. I am not in favour of all partnerships being evidenced by registered documents.

78. I do not think the proposed rule is feasible.

Mr. P. K. ROY and MAUNG TUN WIN, called and examined on Saturday, the 17th May 1924.

Mr. Chari.—*Q.* What is your idea about the standard of efficiency of the subordinate judiciary, not of the district judge, but of the assistant judge, the township judge and the sub-divisional judge?

Mr. Roy.—You mean recruitment?

Q. Are they efficient at present?

A. Well, some of them who have got experience can not be called inefficient, but I think about 50 per cent. are not efficient.

Q. What judges are you speaking of?

A. Both the township and sub-divisional judges.

Q. But sub-divisional judges are usually experienced men?

A. They get their experience in out-of-the-way stations where they have got very little legal help and when they are posted to places like Rangoon or Maymyo they come to know that they have not acquired any great experience.

Q. Are these new recruits any better—those we are now appointing directly?

A. I don't find the new recruits very good—those who have been recruited lately.

Q. Do they lack training?

A. Yes. I think they lack in intelligence too.

Q. Is it want of experience or want of character?

A. I find that some of these recruits have turned out badly much to my disappointment, although I expected them to be better. About their experience of course they have not very much. I think they are all men of middle intelligence.

Q. Most of them are honest, I think?

A. Yes.

Q. Are you in favour of extending the jurisdiction of the Township and sub-divisional judges?

A. I don't see any necessity.

Q. Would you give them any enhanced small cause jurisdiction?

A. In my opinion small cause jurisdiction should be curtailed. I mean that it should not be more than Rs. 200 in Burma.

Q. Are you in favour of village courts?

A. I think they will be useless. I don't think those people will be able to do justice. Supposing we have new Benches of village committees, they could be given powers to try suits.

Q. Will that work a little better?

A. Yes. That will be satisfactory.

Q. After all, Mr. Roy, you don't want an intellectual giant to dispose of these petty cases.

A. Of course not. I am just referring to village headmen who alone sit as judges. We know what sort of people we have got as village headmen. Properly speaking no man who is intelligent or honest will come to a headman's post. I only object to giving them exclusive jurisdiction.

Q. How is the pendency in Moulmein courts? Are suits disposed of fairly expeditiously?

A. I think so.

Q. You have no reason to complain of much delay?

A. No, excepting of course in a few cases.

Q. Is there any delay in the service of processes?

A. Yes.

Q. What is the ground of complaint?

A. The process-serving department is altogether bad. They are under the control of nobody except the baliff and we have got bailiffs who are not men of very high standing and whether the processes are really served or not, whatever the process-server says is believed and as a matter of form some affidavits are taken.

Q. So, the real difficulty is the defect of supervision.

A. Yes.

Q. If the bailiff had a control over them, if for instance he asks them to bring the processes and asks for an explanation in respect of processes not served, would that be better?

A. Yes. A judicial officer too may be made to control the staff.

Q. After the defendant is brought to the court, is there any delay in disposing of contested suits?

A. Generally not.

Q. Have you experienced any difficulty in the execution of commissions in India?

A. Yes, sometimes. Sometimes they are returned without examining the man at all.

Q. Do they take too much time and are they unreasonably long?

A. I should say 25 per cent. of the commissions issued to India take a long time.

Q. I think there is no prolixity in the pleadings in your court?

A. No. Properly speaking I should say in Moulmein we have got a very good Bar.

Q. Are the provisions of the Civil Procedure Code relating to discovery of documents and admission of facts fairly in use in the district of Moulmein?

A. Not very often.

Q. Why? Is it due to the ignorance of the lawyers?

A. Sometimes it is so.

Q. Do you approve of using the Post Office for service of summons at least in big towns and villages, which are within easy reach of daily postal service?

A. I approve of them in some cases; but it should be auxiliary to the ordinary mode of service.

Q. When a case is posted for a particular day and the case is taken up for trial, is it heard from day to day till it is disposed of?

A. In some cases it is not done.

Q. Why?

A. It is mostly because both the courts and the lawyers find that they are already engaged with other cases.

Q. Who is more to blame for this unsatisfactory thing? Is it the court or the lawyer?

A. I think both. The blame is not solely with the lawyers.

Q. Apart from the lawyer, what is the judge's difficulty?

A. They think that, if the cases are not heard from day to day, there won't be much actual hardship and when the other dates are already filled up with other cases, there would be no necessity for hearing from day to day. That is the idea.

Q. Do you agree with the suggestion that, before the case is taken up for trial, after the settlement of issues, the parties, the plaintiff and the defendant, should be examined?

A. I don't think it will improve matters. When these two parties are examined at length in the first instance, they know that they would be so examined and would be properly posted with facts according to their pleadings. You won't take them by surprise. It is only when you take them by surprise that you will be able to know whether they are speaking the truth or not. By that examination one party knows all the facts of the other man and so it would be much easier for him to get witnesses.

Q. Do you mean to say that in the cross-examination of the plaintiff, the defendant has got to show his hand by the line of cross-examination? That will be a minor thing.

A. Anyway, I think it will not improve matters much.

Q. Will it not tend to prevent delay if you pin down the parties to a particular statement?

A. They may be pinned down according to the issues.

Chairman.—The only thing is to prevent the defendant from putting the plaintiff to proof of a fact which he is not able to swear to in the first instance. When the defendant is in the box he will be bound to admit whether the plaintiff's case is true or not. I think the parties should be examined only to stop the issues in respect of matters which the defendant cannot swear to in the first instance, because it might lead to a tremendous waste of time.

A. My humble opinion is that they will say according to their pleadings.

Mr. Justice Stuart.—*Q.* Don't you think that a party might be allowed to call the other party as of right? Take the case of a pronote. A man sues on the pronote. The defendant merely says "I put the plaintiff to proof." Why not put him into the witness-box and ask him whether the signature in the pronote is his or not. He has got to answer "Yes or No." If he says "No," he can be prosecuted for perjury if the plaintiff proves it. Under the present method he never goes to the witness-box. He knows that the case is against him and will hold on that case for 18 months or two years and perhaps in the meantime, he may dispose of his property.

A. I think the evil will be existing all the same whether he is examined before or after issues; because, I have known people committing deliberate perjury. Knowing that the signature is his, he will boldly say that the signature is not his even on the first occasion.

Q. My experience of this is that these people are anxious not to commit themselves and they simply want to avoid saying yes or no.

A. That is because they are not so large-minded as people in England.

Q. I am not referring to England. I am thinking more of courts in Burma.

A. Some of the Burmese, of course, most likely admit it because they have not learnt to speak so much falsehood as others who have been rather trained litigants.

Mr. Chari.—*Q.* Are preliminary issues disposed of first?

A. Yes, specially those which go to the very root of the case.

Q. And after the hearing of the case is judgment delivered fairly expeditiously?

A. Yes. In some cases, for private reasons, it is delayed.

Q. In complicated cases?

A. No, where judges wait for a bargain.

Q. Is there any delay about the execution of decrees?

A. I do not think that there is much delay.

Q. Are the decrees executed fairly satisfactorily?

A. Yes.

Q. What percentage of execution applications filed in money decrees are successful in realising the amount?

A. I think they are successful. People do not pay in a lump sum. They generally ask for instalments or if they cannot pay they go insolvent.

Q. You do not think that the provision for payment by instalments is abused by the court?

A. No, not at all.

Q. Are claim petitions disposed of fairly expeditiously?

A. Yes.

Q. And suits arising out of them do not hold up execution?

A. They are also generally disposed of speedily.

Q. And appeals?

A. In our district we find that they are disposed of speedily.

Q. How long does it take for an appeal?

A. In the district court not more than six weeks. I do not think that we go beyond that.

Q. Do you always get the things done as they ought to be?

A. Yes. We have got efficient judges. The gentleman who gave evidence this morning (Mr. Gilbert) does things very expeditiously.

Q. Are many appeals disposed of under Order 41, Rule 11?

A. Yes.

Q. What percentage do you get rid of in that way?

A. All the undeserving appeals.

Q. What about the codification of the Burmese Buddhist Law? Is it *possible to codify the Burmese Buddhist Law?*

Maung Tun Win.—*That is so complicated that codification would be very difficult.*

Q. The object of codification would be to make the rules simpler than they at present are.

A. Burman customs are changing and very often rules are amended.

Q. You think that stereotyping of Burmese Law would prevent the growth of customs. Would the people like codification because it makes the law simpler?

A. I think they would like it if it is made simpler.

Q. Is it possible to introduce a provision that adoptions should not be recognised unless there is a registered deed?

A. I do not think that it would be possible in districts to have these adoptions registered and in towns I think it could be enforced as the Transfer of Property Act was enforced. In the districts people follow their own custom of adoption without any document and I do not think that they should lose that advantage.

Q. Supposing a circular is sent round all the districts telling people that they must be careful that from 1st January 1925 all adoptions have to be registered. Then everybody is bound to know that adoption has to be by a registered deed.

A. I do not think that people would like it. When we live together as father and child we have to draw an inference from that. I think people like it more than the way you suggest and going to the registration office. Registration for adoptions would not be popular.

Chairman.—It is not suggested that registration of documents should be the adoption ceremony. Adoption would be made exactly as it is done now. Only the adoption would not be valid unless there is a registered deed.

A. The Burmese people have no ceremony of adoption even now.

Mr. Chari.—*Q.* What about the other suggestion with regard to registration of marriages? Do you not think that when a Burmese marries a second wife it should be by a registered deed?

A. Maung Tun Win.—Under the present rules a Burmese can not marry a second wife without the consent of the first wife. She is considered as a mistress. I think the present law is quite good enough.

Q. And you think there is no necessity for such a rule?

A. No.

Q. What about partitions of property? I mean ancestral property among heirs. Sometimes it leads to difficulty, one claiming that the property has been partitioned and another claiming that it is still undivided. Do you think that it is possible to make a rule that all partitions of the value of more than Rs. 100 should be evidenced by registered documents?

A. I think the Burmese people seem to be very much satisfied with the present rules and there is no need for making a new rule.

Q. The difficulty arises only when there is a dispute?

A. I do not think we need such a rule for the present.

Evidence recorded at Mandalay.

PRESENT:

The Hon'ble Mr. Justice L. Stuart, C.I.E., I.C.S.—Member.
Mr. C. V. Krishnaswami Ayyar—Secretary.

Mr. A. G. MOSELY, I.C.S., District and Sessions Judge, Mandalay.

Written Statement.

2. (*a*) Yes.

(*b*) The primary cause is a general and psychological one. The mentality of litigants is the chief cause of delay, and they get the civil justice which they deserve. Too many litigants and witnesses have no regard for the oath, and no scruples as to methods. Their one object is to succeed. Time is of little consequence. Lawyers are chosen for pertinacity and vehemence rather than skill, and litigants too often interfere with the lawyers' conduct of the case. As to more special causes these are of many kinds. In Burma the clerical staff is poorly paid and inefficient. There is no officer of the court except the judge to supervise them. The system of recording evidence and writing judgments is antiquated. Judges are overworked. Advocates receive insufficient remuneration, and do not prepare their cases. Witnesses are far too numerous. "Fishing" cross-examination is the rule. Advocates are too prolix. Appellate courts insist on too elaborate judgments, and in particular on too elaborate a discussion of the evidence. It frequently pays to contest a case merely to obtain delay. The *benami* system, the joint family system, the large number of cases in which minors are concerned, maintenance, the facilities for filing speculative suits in *formâ pauperis*, the facilities for filing cheap declaratory suits, the prevalence of cross suits filed merely for delay, the contesting of the majority of arbitration awards on grounds of misconduct, these are some of the main causes or symptoms of delay in civil regular suits that occur to me at random.

This district court, more than any other in the province, is choked with miscellaneous work. Applications for letters of administration are mostly an abuse of the Act and field merely to get a declaration of title or heirship, and to obtain property. Half the applications in involvency are dishonestly made to avoid payment of debts which the debtor can pay. Most attachments in execution are followed by applications for removal of it. Execution is delayed by frivolous applications for delay by the judgment-debtor, and by applications being filed merely to save limitation.

Evasion of process is the main cause of delay in appeals.

3. A busy district court should have (1) a good shorthand typist on an adequate salary, (2) a sub-registrar who would receive applications, pass interim orders, pass orders in uncontested and *ex parte* regular cases, uncontested probate cases, minor insolvency cases, execution cases, etc. There is far too much left to the judge himself to do. The majority of head clerks or bench clerks can give little help in such matters.

Changes in substantive law are needed.

As to changes in the Civil Procedure Code, and in the practice of the court:—

(*c*) The judge should have power to refuse costs if the advocate is not properly prepared.

(*d*) To order penal costs both interim and final where a defence is merely dilatory.

(*e*) To stop examination and cross-examination when "fishing" or unnecessary, for reasons recorded.

(*f*) Appellate courts should not insist on too elaborate judgments or discussion of evidence.

(*g*) Appellate courts should be stricter themselves and encourage lower courts to be stricter in refusing to allow documentary or other evidence at a late stage.

(*h*) Commissions should be refused at a late stage. The present law merely allows a court not to wait for their return after issue.

(*i*) It should be laid down that open commissions (usually executed by prolix members of the Bar) are the exception and commissions on interrogatories the rule.

(*j*) The court should have discretion to refuse commissions to another province altogether, where some oral evidence in the province where the suit is filed is obtainable.

(*k*) If at the framing of issues one of several parties and his pleader absent themselves (as is often done to avoid action under Order X, rule 1) the court should have power to decree the suit against such party including the persons represented by him. It should be laid down that every party or his next friend or guardian *ad litem* shall personally appear at the first hearing unless leave of the court has been otherwise obtained.

(*l*) In Order IX, rules 9 and 13, the words " sufficient cause " are too wide. I suggest " sufficient cause which could not have been avoided with ordinary care and skill." These rules are much abused. At present if anybody catches the last available train or boat to attend, and that is late, application is made for reopening.

(*m*) Applicants in *formâ pauperis* should be made to give security for costs if the suits appear to be groundless or speculative, or for other sufficient cause.

(*n*) Order XVII, rule 3, does not give any scope to the court for penalising the defendant at a stage where the plaintiff has produced no evidence and the defendant has obtained time to do some act necessary to the progress of the suit and has failed to do it. This is the most glaring defect in the Code, and one of the most prolific causes of delay. The court should have power to impose not merely costs for an adjournment but penal costs, or to decree the suit.

(*o*) The court should have power to refuse a proportion of the costs where part of the grounds of appeal or application in review or revision are groundless.

(*p*) It should be made clearer that the court has power to refuse an application under Order XX, rule 11, without issuing notice to the decree-holder.

(*q*) Appellate courts should be much stricter in allowing stay of execution, especially *re* costs.

(*r*) The court should have power to decree a suit against a party who refuses or neglects to amend an evasive pleading.

(*s*) The filing of a written statement in regular suits should be compulsory and the court should have power to decree a suit if a written statement is not filed at the first hearing.

(*t*) In certain classes of miscellaneous cases (see question 36) and especially removals of attachments the courts down to and including first class township judges should have the power to hear the case summarily in the manner done in criminal trials.

(*u*) The court should have power without application to compel either party to take the oath in their place of worship and decree the case in default.

(*v*) I would extend the scope of commissions for accounts. At present the court has only power to appoint a commissioner to examine or adjust them. I would allow him to record evidence on them and a finding on them in every case, even where the question of validity or fabrication is concerned, and leave it to the court to accept or reverse that finding.

6. Yes, and particularly by officers officiating for a very short time. Knowledge of the advocates, litigants and prevalent types of cases is essential. An officer who officiates for a short time cannot finish any of his work and usually finds it useless to take up any long case.

7. Yes. The old system by which there was a combined township judge and additional magistrate in every township avoided this congestion. It also facilitated the litigants, and the service of processes.

12. The district judge, Mandalay, has far too much miscellaneous work. The figures for 1922 were 276 cases in all—

of these 45 were applications for Letters of Administration,
of these 16 were applications for Succession Certificates,
of these 60 were applications for Insolvency,
of these 85 were applications for removal of attachment,
of these 9 were applications for review,
of these 22 were applications for *formâ pauperis*,
of these 21 were applications for Guardianship,

=258 out of 276 cases, in a large proportion of which evidence was recorded.

In 1923 out of 323 cases, 42 were for Letters of Administration, 88 were for insolvency, 15 were for *formâ pauperis*, 13 were for Guardianship.

There was no additional district judge, till towards the end of the year. There are over 100 suits over Rs. 5,000 in value yearly, 200 appeals and criminal work. With an additional district judge no further arrangement is necessary.

Otherwise I would appoint a sub-registrar (*vide* answer to question 3) anyhow for cases up to Rs. 5,000, except these under the Indian Succession Act, or appoint the sub-divisional judge district delegate (I believe there are none in Burma) and empower him to take insolvency work. I would not relieve the district judge of any non-judicial administrative work.

13. (1) Yes, sub-divisional judges except in cases under the Indian Succession Act, (2) all officers. The criterion is the volume of work in any particular station.

15. We have only a few village headmen in Burma, specially empowered up to Rs. 20, no village courts. I would establish circle courts with exclusive jurisdiction in all types of cases up to Rs. 20 at first. There may be loss of efficiency at first. But there is too much perfectionism in our present system. Lack of legal knowledge will be made up for by local knowledge. Specially empowered headmen do not care trying civil suits, and the people do not care to submit these to them at present.

16. (*a*) Yes, a crying need in district courts. I would not trust subordinate courts. No limitations.

20. Yes. I would allow no second appeal under say Rs. 500 on a question of fact under the Burma Courts Act where a subordinate court has been reversed on first appeal.

22. Not as much as it should be, but increasingly so. It is inculcated in annual reports. Too elaborate judgments are insisted on by many appellate courts.

24. See 3.

25. I think tender to one of the family or a servant, *plus* endorsement by him, if accepted, should be made sufficient service.

27. Evasive pleadings are common, particularly when Indian advocates are employed.

28. Yes, by registered post, particularly in insolvency cases, where a large number of creditors are to be served. No, village officials have far

too many duties already, and it is nearly as easy to reach the witness or party as the headman.

33. Yes, but unfortunately the disclosure of the full case of either side would lead to far more evidence being produced to meet it on the other side, and fabricated evidence at that.

34. Not in this court, because it is considered unfair to require a witness to attend a second time before the party has paid his subsistence allowance. The practice is for the court to warn witnesses if the subsistence money is paid into court then and there. There is little consequent delay as the court considers it the party's duty to do this, and does not necessarily adjourn at the next hearing if he does not summon his witnesses and they are not served.

35. Yes.

I can suggest nothing except mulcting the party responsible in costs. See previous answer. If the list filed seems excessive the court should be able to require an affidavit of what they are to prove.

36. The danger of allowing proof by affidavit is that it represents what the witness is tutored to say more often than what is his own knowledge or even belief. I prefer summary trial as in criminal cases. See 3 (*t*) above.

37. I agree that if necessary after the examination has gone a certain length when the court is able to gauge the importance and relevance of the witness (including parties), it should have discretion to fix a time-limit. It should usually briefly record its reasons. I say parties, because the greatest abuse of the time and patience of the court is in the cross-examination of parties.

38. See answer to 16 (*a*). I would extend Order 37 to district courts, anyhow in large towns and ports in Burma, Mandalay, Moulmein, Akyab and Bassein. This is urgently needed.

41. Yes, I agree to the suggestion.

42. In this court applications for arrest, attachment and injunction are often exaggerated so as to comply strictly with the provisions of the Code as to intent to avoid execution of the decree that may be passed. They are usually well founded in fact.

43. Yes. By precept and example of appellate courts exemplified in reported cases.

44. Yes, when they arise and are not mixed questions of law and fact. On the other hand the number of frivolous points of limitation taken is legion.

45. Yes, by subordinate and district judges.

46. Yes. No rule. Executive orders by the High Court.

47. (*a*) Yes.

(*b*) and (*c*) By giving the commissioner all the powers of the judge, including the power of requesting any party to pay the proportionate costs for any part of the hearing to the other side.

(*d*) Yes. See answer to 3.

49. Yes, where possible, if the next day's diary is not full. It usually is full.

The only remedy is more judges, or skilled assistance.

51. Yes, in district courts; subordinate courts rarely get such cases. Most cases would be covered by summary procedure. See above. As it is, this court and I believe most courts give precedence where they can to such cases by fixing short dates for hearing. This of course too often means 2 or 3 witnesses a day taken on days where there are vacant corners. See last answer to 49.

56. (*a*) Yes, six years is ample.

(*b*) It would only encourage infructuous applications in execution made merely to keep alive the decree.

I would allow the decree-holder to apply any time within the six years. The intention of the three years' limit was to prevent speculative executions by a decree-holder who had abandoned real pursuance of his decree. The effect, however, was to encourage infructuous ones to keep it alive.

72. No. (And it may be remarked such witnesses are more often tampered with than any others. They have merely to say that they signed, but did not see the mortgagor do so). Yes, the only danger is impersonation. It must be understood that mortgages of immovable properties only are in question, and not hypothecation deeds.

74. I would restrict the disability under section 6, Limitation Act to one year after the disability clauses. I would scale the periods down generally.

75. I would insert provisions in the Probate and Administration Act and Guardian and Wards Act and Succession Certificate Acts to ensure that no court need enquire into the application when it is of opinion that it is not *bonâ fide* (and merely a cheap form of trying to obtain possession of property). I would allow no gifts by way of advancement to minors. I would extend the doctrine of section 53, Transfer of Property Act on the lines of sections 53 and 54, Provincial Insolvency Act. I would put the burden of proving consideration on the seller and deem the transfer fraudulent if within a certain date of the debt or suit, and if thereby the creditor was defeated. It is a question whether the plaintiff in a simple money suit should not have the power to add the transferee of the defendant's property as defendant where he raises such allegations instead of being compelled to file a separate suit against the transferee.

76. No. This mainly agricultural province is not ripe for it, if this means partitions amongst co-heirs.

77. I would agree, including private companies.

81. I would agree; whatever the preliminary hardships, and I think there would be little real hardship.

82. Yes. Suits for divorce and division of joint property should pay half *ad valorem* fees on the property.

84. The facts should be stated in the plaint and if not so stated and proved, the suit should be dismissed.

85. Yes, demurrage, collision, loss by accident or negligence to freight or cargo and insurance cases and any cases where the court considers that lengthy evidence as to accounts or to the price or value of goods or produce or live stock is required which can be more conveniently so taken.

General.—I think the relief most required is to relieve the judge of the burden of recording evidence wherever possible, and that it can easily and safely be done by extending the powers of commissioners, by provision for the appointment of referees, and sub-registrars, and by providing for powers of summary trial

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Memorandum of the oral evidence of Mr. A. G. MOSELY, I.C.S., District and Sessions Judge, Mandalay, taken in Mandalay on Wednesday, the 7th May 1924.

Has been here with exception of a few months for the last four years.

His views.

1. *Summary Powers.*—In all suits of a nature cognizable by a small cause court, district judges and selected subordinate judges should have powers of a small cause court and employ small cause court procedure whatever the valuation.

2. *English* should be the court language of district courts. Burman can be written fairly legibly, but it would save much time if plaints, written statements, and applications were written in English. Evidence is at present recorded in English. He foresees no hardship to litigants.

3. *Limitation* of the number of advocates to the number for whom there is work. The present overcrowding lowers the scale of fees, so each man is out to get as many cases as he can, and neglects them. Further it leads to encouragement of litigation by members of the Bar. The result desired could be effected by limiting the vacancies in law colleges to a number of students who would be selected by competitive examination. There are 57 practising members of the Bar in Mandalay town alone, *viz.*:—

9 Advocates.
12 First Grade Pleaders.
33 Second Grade Pleaders.
3 Third Grade Pleaders.

4. *Record.*—The record of evidence in all cases should be the judge's notes. Limits this to district judges and selected subordinate judges. Same procedure as on the Original side of the High Court.

5. District court to be a court of record with powers to punish for contempt, mainly in respect of witnesses and defendants.

6. Applications for adjournment by plaintiffs without prosecution of case, in order to put pressure on defendants. This is noticeable in matters of execution. The difficulty arises in this way. When the courts to overcome this abuse dismiss suits for want of prosecution, appellate courts are apt to restore.

7. All *execution* and miscellaneous proceedings should be recorded in summary form.

8. An application in execution should open the record of execution of that decree. All subsequent applications should be added to that record and treated as part of the same record. This would obviate necessity of filing a fresh copy of the decree on each occasion.

9. Order 21, Rule 69 (2) suggests it would be sufficient to notify adjourned date by slip over original notice or otherwise instead of issuing fresh proclamation.

10. *Substantive Law.*—The law should be clear on the following points. Is it permissible for a defendant in a suit on a Negotiable Instruments to claim the right to reopen the accounts generally or in particular to question the validity of previous negotiaable instruments, the satisfaction of which has formed the consideration or a portion of the consideration of the instrument in suit? Should the court have discretion in the matter? Should the discretion of the court in granting or refusing the grant of leave be open to appeal on revision.

The law should be amended if necessary to prevent its being put forward as a reason for special indulgence that a party's accredited agent has not shown diligence in prosecution.

Applications (*a*) for Letters of Administration, (*b*) for custody of minors' property.

The trial court should have discretion to refer parties to a regular suit in cases in which title to the property is involved. This would save time in the end.

Illustration.—A dies, B applies for Letters of Administration of his estate as his adopted son. The adoption is denied. Here B's object is really to obtain possession of the property against the heirs under the personal law, and thereby to collect rents.

Burma Joint Family System.—Buddhist Law. A definite ruling is desired on following point. Husband and wife join partnership. Has a husband power to transfer joint property, and is such property responsible for debts where debts are incurred for common purposes. The burden of proof that debts were not contracted for common purposes should be on person contesting alienation.

11. Fraudulent litigation by money-lenders. There is much petty fraud by Burman petty money-lenders on small promissory notes especially when executed by illiterate persons. This might be met by registration being insisted on.

12. *Sabape.*—Money-lender advances Rs. 100 to the cultivator in July. Cultivator repays 100 baskets of paddy (basket 46 lb.) worth Rs. 200 in January = 200 per cent.

That is a common form of loan.

13.

Estimated work.		Estimate for hearing.	Lower Burma.	Standard.
Sessions cases	30	60	50	100
Criminal appeals	345	34½	500	50
Criminal revisions	250	15	300	20
Civil regular suits over 5,000—				
(1) Normal	50	150	20	..
(2) Arrears	87	261	..	..
Civil appeals	110	37	100	..
Civil miscellaneous	350	100	20	..
Executions	310	10	20	..

Work for May 1924.	25 working days.
4 days, Criminal Appeal	Writing judgments.
7 „ Sessions	....
14 „ Civil Work	15 Regular suits in 6, 136 witnesses cited, rest lists not ready, 16 civil appeals hearing, 21 miscellaneous cases.

Memorandum of the oral evidence of U SAN LIN, Chairman, District Council, Shwebo, and Mr. BONNERJEE, Secretary, Bar Association, Shwebo, taken in Mandalay, on Wednesday, the 7th May 1924.

(No Written Statement received.)

Taken together—{Mr. U San Lin does not know English.
Mr. Bonnerjee interprets.

System in Shwebo is non-regulation under which the same officer has criminal, revenue and civil powers. Objects to that. Wants whole time civil courts. Present system causes witnesses to be called back, and throws out members of the Bar. There are in Shwebo the following townships:—

Shwebo.
Kinu.
Wetlet.
Yeu.
Taze.
Kyunhla.
Taboyin.
Kanbalu.

These places are 25 miles apart.

I would substitute 2 sub-divisional courts with powers up to Rs. 5,000 and small cause court powers up to Rs. 100 going on circuit.

Quality of present officers leaves much to be desired in knowledge of law and appreciation of evidence. The work is amateurish.

The number of lawyers in the District is approximately:—

Shwebo	17
Kinu	5
Wetlet	4
Yeu	4
Taze	None.
Kyunhla	None.
Taboin	1
Kanbalu	None.

They do all work civil, criminal and revenue. Shwebo is a Municipality. Yeu has a town committee. The remainder are large villages. The personal law in civil suits is mostly Buddhist law. Eastern Shwebo is fairly well populated. Western Shwebo is not. There are many suits on mortgages and promissory notes. The remaining litigation is mostly such litigation as is common amongst villagers. Process-serving is bad. Suggests assistance by headmen of villages. They are not very satisfactory but could help. Identifiers not employed. In favour of use of the post office as additional means of service. Also advocates use of pleaders' clerks. A mortgage case would take about a year. A case on a promissory note would take from six to eight months. A suit by a claimant alleging adoption would take from six months to a year. The people are reasonably honest. Mr. Bonnerjee practised in Midnapur. The Burman, in his opinion, compares favourably with the Midnapur witness. He would give false evidence to oblige a friend but not many would do so for money. There is much oral evidence in money suits. Forgery is not common. Very few suits are instituted on forged promissory notes. There are mills in district but very little commercial litigation.

Mr. U San Lin opposes codification of the Burman Buddhist Law. Mr. Bonnerjee favours it. Mr. U San Lin's position is that the law is contained in sacred books, and that Buddhists would resent codification. He has no objection to registration of the factum of adoption as an essential to a valid adoption provided no fee is charged for registration.

Pleadings should be simplified. Order 6, rules 2 and 3 should be followed.

Service of Summonses.—The courts are unreasonably strict in insisting on personal service on the defendant. They overlook the provisions of Order 5, Rule 15.

Many judges refuse to hear the witnesses who are present when all the witnesses are not present. The judge frequently will hear some witnesses and direct others to come again. Judgments are frequently delayed.

Arbitration.—Objects to the practice by which parties obtain adjournments stating that they have arrived at an agreement to settle the matters amicably according to the decision of a certain person or certain persons but without filing an agreement to refer or seeking the intervention of the court.

Execution.

Execution in all courts is left to clerks and not done by the presiding officer himself. Warrants for arrest should be executed in any district. Attachment before judgment should be granted more freely.

Mr. J. N. BASU and Mr. L. K. MITTER, Representatives of the Bar Association, Mandalay.

WRITTEN STATEMENT.

1. A.

High Court.

First appeals, 6 months.
Second appeals, 4 months.
Miscellaneous, 3 months.

District Court.

Original suits—
  Title, 1 year.
  Money, 6 months.
  Regular appeals, 3 months.
  Miscellaneous, 2 months.

Sub-Courts.

Title, 6 months.
Money, rent and others, 4 months.
Small Causes, 2 months.
Claim proceedings, 2 months.

2. Yes, main causes of delay:—

(*a*) Difficulty and delay in serving process.

(*b*) Over-crowding of judge's file.

(*c*) Want of adequate legal training of the subordinate courts and appointing inexperienced and untrained men to high judicial posts.

(*d*) Interpretation of non-Burman witnesses, and translation of non-Burmese Account Books.

(*e*) Examination of witnesses on commission and interrogatories.

(*f*) Inexperienced pleaders handling title suits.

(*g*) Non-use of discovery and inspection rules.

(*h*) Sometimes the tactics of the parties.

3. Remedies suggested:—

(*a*) Processes to be sent by post to village headman, and panchayats, who are to serve them. All registered companies to be served by post, the Manager to be declared competent to prosecute or defend on behalf of his Company; process-servers to call at pleader's office before going to serve, processes may be handed over to parties for service, when they so desire.

(*b*) All *ex parte* cases may be decided on affidavits.

(*c*) Compulsory use of the discovery as to admissions and documents before issues and penalising non-use by separate costs.

(*d*) Full examination and cross-examination of the parties before issues are framed.

(*e*) Effective check of the ministerial and process-serving departments which are corrupt from top to bottom.

(*f*) Trial of title suits and suits of intricate nature by experienced and trained judges only.

4. Recruitment is faulty, and absolutely unsuited to present circumstances.

(*a*) Excepting High Court and district judges, all other judges must go through a probation of 2 years at a lawyer's office or at least 10 years original practice.

(b) All judges both Provincial and Imperial, should be recruited from the Bar, for district judgeship 10 years, for others 5 years practice necessary, only a district judge of 10 years standing is fit to be High Court Judge.

(c) No I. C. S. man should be appointed as district judge until he has put in ten years in civil work. I. C. S. men before being appointed as a judge or magistrate should be apprentices for two years in an experienced lawyer's office.

6. Not appreciable in civil cases in Burma where there is so much corruption transfers are called for more often than in other provinces.

7. People do not get justice from courts generally. The judges are made mere machines for quick disposal of cases. Their prospects and promotion depend upon the outturn of decisions. The trial judge's findings on facts being almost final in most, if not in all cases, the hurry to dispose of cases is disastrous. The judge must not be slow, lazy or ignorant of law and procedure and should have experience. There should be a board formed, consisting of at least five persons—one High Court Judge, one experienced district judge and three experienced lawyers, who should every year audit and scrutinise district judge's annual reports and suggest rules towards efficiency and quality of work done by all courts subordinate to the High Court.

8. Not in Burma, where lawyers are engaged not per day, but for the whole work, and therefore lawyers are more interested in speedy disposal of cases in their hands here than in other provinces.

9. The following checks are suggested:—

(a) District judge should devote more time to inspection of subordinate courts and offices, and submit results to the board. So he should be relieved of trying original suits and appeals ordinarily, Probate Administration, Guardianship, Land Acquisition and such original cases as are considered necessary; other judges may try non-contentious cases, according to their respective jurisdictions.

(b) Title suits should be tried by experienced subordinate judges exclusively, they may hear appeals, etc., and claim cases, sometimes.

(c) Munsifs and myooks may try rent suits, money and other cases.

10. No.

12 and 13. See answer to question 9.

14. See answer (a) to question 3. Judges of such courts to be selected from a panel consisting of 15 to 20 deserving men elected every year in the locality. Each bench to consist of 3 judges ordinarily, in intricate matters 5 judges. No rules of Evidence, Limitation and other Acts, of the legislature should handicap them. No appeal and revision should lie against their judgments but they should not execute their decrees, but should send them to ordinary courts. May try suits up to Rs. 200 in value.

17. No.

18. Reports to higher courts should not be curtailed or handicapped, as in Burma the judges are untrained and inexperienced mofussil advocates not up to the mark, and the lower judiciary and occasionally the higher are corrupt and inefficient.

20 and 21. No.

22. Yes, the power is already exercised too drastically. As long as better judges are not available, it is unfair to be so strict.

23. Not ordinarily; there may be some exceptions. To exact deposit would amount to a denial of justice, in most cases, especially in a corrupt country like Burma. (2) Suggestion not acceptable.

24. Already answered.

25. Regarding section 106, Transfer of Property Act, it may be tried first in big towns.

26. Pleadings should be a bit stricter but not after English writ till we get better judges and lawyers in the mofussil. Non-compliance might be penalised by separate costs.

27. They are not strictly followed.

28 to 33. Already answered; see Question 3.

34. Parties are very much inconvenienced and annoyed at repeated attendance at courts, without being examined. They have no decent place to sit or wait. There should be a special place for women. They are invariably asked to attend court at 10 A.M. without any reference to courts, time or the cause lists or convenience of witnesses. After first summons parties may be asked to bring their own witnesses and courts should warn their attendance next time without fresh summons.

35. Yes, owing to untrained judges and lawyers the judges do not read the proceedings carefully before they begin the trial.

Latter part answered already.

36. Yes.

37. No, not in Burma and in provinces where there are untrained judges and magistrates.

38. Not in Burma.

40. No.

41. The bailiff is generally made the guardian *ad litem*.

41. The bailiff is generally made guardian *ad litem*. No officer of court can do any justice to the minor's case. A list of pleaders agreeing to act as guardian *ad litem* should be kept in every court—they should be selected in rotation by the court. Their fees should be settled per case, making it unprofessional conduct if they neglect. A lot of time and money would be saved thereby. If one retires after appointment, the next in the list to be chosen and so on.

42. The Code gives sufficient check already.

43. Not in this province, but judgments are unduly delayed in delivery.

44. Not generally, but sometimes when pressed by lawyers.

45 and 46. Much is left to the clerks, the judges only put their initials thereon; only in big towns judges consult the pleaders, but not in mofussil. No case should be fixed without such consultation beforehand. There should be separate column in the diary sheet for pleader's initials to every order passed by the judge in the case.

47. Yes, open commission should be the rule. Commissioners to be empowered to disallow irrelevant questions.

48. Yes.

49. No. When judges are anxious for disposal only, big and heavy cases are put off on some pretext or other. Pleaders sometimes have to put some kind of adjournment petition to humour the judges. There should be a separate list of pre-emptory hearing cases and the dates should be fixed by the judges in consultation with pleaders. Adequate explanation should always be called for in default and put up before the committee by the district judge.

50 and 51. No.

53 and 55. Yes.

57 to 59. Yes, delete 2nd proviso to Rule 16, Order 21.

60. No objection.

61. Special notice unnecessary, (*b*) delete altogether Rule 21, Order 22.

62. Leave it as it stands.

63. First part—No. 2nd part—Yes.

64. Yes; may be simultaneously issued. First notice personally on parties; subsequent ones on pleader, unless special notice to parties is deemed necessary.

65. Yes.

66. Yes. One decree is sufficient in simple mortgage-suits. Reply to the latter part, No.

67. Stay on insufficient grounds may be penalised by heavy costs but not by compensation.

68. Security may be demanded before stay.

69. Yes; very much. Insolvency law should be elaborately codified with a strict eye against its abuse. Combination between debtors and creditors, combination between some creditors and receivers, security of properties by the debtors are some of the flagrant malpractices. The office of the receiver should be a permanent one, and a pleader of at least 10 years experience should be appointed with a consolidated pay and no commissions. But contentious cases may be tried by judges having jurisdiction.

70. Yes, attachment before judgment may be effected outside jurisdiction.

72. Attesting witness's examination need not be compulsory. Admission of execution and consideration before the registering officer may be taken as *primâ facie* evidence, throwing the onus to prove contrary on the other party. Similar rule as to such admission before a notary public. All other documents may be executed before an officer like a notary public, certificate of such notary public may be taken as *primâ facie* proof, throwing the onus on opposite party to prove the contrary.

73. Yes, may be tried. Much time and money is wasted in securing "certified copies." The copying departments are nuisances to parties and pleaders. This department should be overhauled.

75. The managers of registered firms should be empowered to prosecute or defend suits and receive notices, etc., on behalf of Companies. *Benami* system may not be recognised by courts.

76 to 78. Yes.

79. No.

80. Thumb impressions should be taken in the presence of the registering officer, and a pleader's identification made essential, who should also attest it, in the presence of the officer.

81. *Benami* transactions may be declared illegal.

82. Frivolous suits may be penalised by heavy costs, malicious or false suits may be penalised by exemplary compensation.

83. Attestation necessary in all cases, but proof by attesting witnesses not compulsory.

84. Champertous agreements should be registered.

85. Yes, more resort to arbitration and formation of panchayat courts. Referees where expert knowledge is necessary.

86. Yes, very much—only Privy Council and Full Bench Rulings.

87. Codification of Hindu, Muhammadan and Buddhist Law absolutely necessary and immediately called for.

Memorandum of the oral evidence of Messrs. J. N. BASU and L. K. MITTER, Representatives of the Bar Association, Mandalay, taken in Mandalay on Wednesday, the 7th May 1924.

Process serving.—Staff in Mandalay inadequate, inefficient and underpaid. Delay in district judge's courts mainly in original suits. The interpretation of the evidence of Chinese, Tamil and Gujrati speaking witnesses and other witnesses speaking languages other than Burmese is done most inefficiently. Only lately there have been interpreters and there is no Tamil interpreter at present, and no translators' department. The Bar are in favour of whole time civil judges who tour.

Panchayat and village courts should be given exclusive jurisdiction, and make them compulsory. (I explained to them the Punjab arbitration system. They considered it an excellent idea.)

In outside districts there is a serious grievance that witnesses are brought to court and then sent away. In Mandalay the work is better done.

Dates are not fixed in the outside districts by the judges themselves and they do not estimate the time required for hearing the cases. Too much is left to the clerks. (I put to them the United Provinces registered address idea. They thought it a good idea provided that written notice as to necessity of recording address was served on the person affected.)

Insolvency in a hopeless muddle. The law wants revision.

The Mandalay Bar Association while recognizing the difficulties of codification is necessarily in favour of it " as the lesser of two evils."

Written statement of the Hon'ble Mr. Justice C. P. R. YOUNG, of the Rangoon High Court (not examined).

I propose to confine my remarks to the Original side of the High Court, that being the side of the court with which I am most familiar.

1. I think six months may be regarded as the period reasonably required for the disposal of original suits.

2. The period now taken for the disposal of these proceedings exceeds what I consider to be the reasonable limit in most cases.

I consider the main causes of the delay to be the habit of the advocates to apply for adjournments. They file the plaint or written statement as the case may be, and then go to sleep till the case appears in the warning list: then they wake up and apply for inspection of documents, interrogatories and what not and when the case comes on for hearing both parties unite in saying that they have not had inspection.

3. I should suggest the introduction of some such procedure as the English summons for directions (Order 30).

4. I don't think it necessary to alter the present method of recruitment of High Court Judges.

7. I cannot prescribe a standard of efficiency for a High Court Judge as regards amount of work to be done.

8. I think the present delay is perhaps partly due to the concentration of many civil courts in Rangoon, but more largely to the concentration of work in a few hands.

9. I think the jurisdiction of the small cause court might be increased with advantage—not the pecuniary jurisdiction.

15. But by a restriction of Schedule 2 of the Provincial Small Cause Court Act, *e.g.*, I would allow a small cause court to try petty claims under Order 21, Rule 63, and generally suits for compensation under article 35 where the compensation claimed did not exceed Rs. 2,000. I see no objection to suits to enforce simple mortgages by the sale of the mortgaged property and also suits relating to small partnerships with a capital of under Rs. 1,000 being dealt with by the small cause court.

17. I think sub-registrars might well be allowed to try any class of uncontested suit without limit of jurisdiction.

19. I would do away with the right of Letters Patent appeal from the judgment of a single judge except when such judge certifies that the case is one fit for appeal. I agree with the suggestion in 19 (*b*).

20. I think no second appeals should be allowed in cases of Rs. 500 and under.

21. I agree with the suggestion.

22. Yes.

23. I agree with both of the suggestions.

24. *Vide* answer to Question 3(a)

25. I think the application to civil suits of the procedure under section 106, Transfer of Property Act, desirable.

27. They are not much neglected in the High Court.

28. I don't think the more extensive use of the post office for the service of notices and summonses desirable, but I think the village officials might be used for serving process.

29. Yes.

30. I think this is usually done.

31. I would suggest that parties be required to hand into the court a joint memorandum of the issues on which they wish to go to trial.

32. The provisions of Order X are generally speaking neglected in the High Court. The pleadings and issues render it unnecessary. The provisions of Order XI are taken full advantage of. The provisions of Order XII *re* the admission of documents and facts are not generally utilised. The reason of the neglect is that counsel only finally prepare themselves for the hearing at the last moment and that generally speaking the case is got up from beginning to end by him and there are no solicitors. I cannot suggest any remedy in this province where the costs are on the lump sum principle.

33. I think the pleadings, if properly drawn, are sufficient for the purpose, and I would not make two bites at one cherry by examining the plaintiff and defendant as a preliminary measure.

34. When adjournments are granted it is impossible to keep the witnesses hanging about for, perhaps, weeks.

35. I don't think much unnecessary and avoidable oral evidence is let in in the courts of this province.

36. I think that the suggestion that affidavits should be the primary mode of proof in the cases specified, and that oral evidence should only be allowed on cause shewn and on the prepayment of special costs, a good one.

37. I don't approve of the suggestion that courts should have discretion to fix a time limit for the examination and cross-examination of witnesses.

38. I would extend the provisions of Order 37, Civil Procedure Code, to rent suits, eviction suits and mortgage suits, including redemption suits.

41. I think the suggestion that the plaintiff should be made to name as many guardians *ad litem* as he conveniently can and that the court should select the most fitting out of those consenting to act a good one.

42. There are of course cases in which *ex parte* injunctions are found to have been improperly applied for. I can suggest no other remedies than costs and compensation under section 95 of the Code.

43. I don't know that the judgments in this province are often unduly long and as they are written in a judge's spare time, I don't know that it interferes with the speedy despatch of business except by tiring him.

44. I think preliminary law points going to the root of the case are usually disposed of before going into evidence in this province.

45. Dates for original hearing are not usually fixed by the judges themselves: dates for adjourned hearings are so fixed practically in all cases. I

don't think that the practice of having the dates of hearing fixed by the Registrar has led to any delay.

47. The only solution is to enable the commissioners to disallow irrelevant questions, but this would be tantamount to having two judges in one case, which I think is objectionable. I would approve the suggestion that written interrogatories should be the rule, except where special leave of the judge is given.

48. I don't think the insistence on *written* applications for adjournments would have much effect in speeding up work.

51. Commercial suits might with advantage be given priority over other cases in the subordinate courts.

57. I would not alter section 66 of the Civil Procedure Code, so as to prevent any party to the suit in execution of which the sale took place from saying that the apparent purchaser is not the real purchaser.

To do so would, I think, encourage the practice of buying *benami* and the "party to the suit" might be a *bonâ fide* creditor of the real purchaser in respect of another claim. If this latter contingency were provided for, then I see no objection to the proposal.

58. I think the suggestion a good one.

59. I see no reason why the second proviso to Order 21, Rule 16, should not be modified so as to allow the questions between the holder of the decree and the judgment-debtor or debtors being settled in execution under section 47.

60. I think the deletion of Order 21, Rule 21, would in many cases lead to unnecessary and spiteful arrests.

61. I think the delay in executing the decree requires explanation and that the party against whom execution is to issue should be heard. I would not therefore delete Order 21, Rule 22.

I consider the enabling power in clause 2 sufficient to prevent hardship.

I think also it would be objectionable to allow the decree-holder to issue the notice himself.

62. I think a provision that there should be no *interim* stay in the case of money decrees would work hardship.

64. I think the judgment-debtor or his vakil should in all cases be served with a copy of the proclamation of sale. I see no reason why writs of attachment and sale proclamations should not issue simultaneously in all suits. I think notice might be served on the vakil provided he continues to represent the judgment-debtor and that that should be sufficient notice.

66. I see no necessity for a final decree in simple mortgage suits nor do I think it necessary to have a separate personal decree when the security has been exhausted.

67. I would invest the appellate court with jurisdiction to award monetary compensation in cases in which they are satisfied that orders staying execution have been asked for and granted on insufficient grounds just as in cases under section 95.

69. Insolvency naturally hampers a decree-holder getting the fruits of his decree speedily, as the whole estate has to be wound up and the decree-holder only gets a *pro rata* proportion of his decree.

70. I think the provisions for arrest and attachment before judgment sufficiently provide against the evils mentioned.

72. I don't think much time is lost by the provision that the plaintiff suing on a mortgage deed must call an attesting witness if available, and I think it a valuable provision so long as the law requiring attestation remains in force. I would not allow every mortgage deed to be presumed to be valid and make the person who disputes it prove his case.

73. I see no reason for insisting on certified copies, provided that the other side consents to the reception of uncertified copies.

76. I would agree that all future partitions of immovable property should be evidenced by a registered document. I would also introduce a similar provision in the case of future adoptions.

77. I agree that there should be a similar provision as to partnerships started with a capital of Rs. 100 and more and as to all contractual partnerships.

78. I agree that the doctrine of part performance practically negatives the provisions of the Transfer of Property Act as to creation of titles in immovable property and should not be allowed in this country.

79. I also agree with the proposal contained in this question.

80. I would adopt the principle contained in this question subject to the limitation that the document affected property to the value of say Rs. 100.

81. The enactment of such a rule would undoubtedly assist in the speedier realization of the fruits of a decree, but I think the proposal too drastic.

82. I think that frivolous suits could be reduced by the method suggested and I would suggest that the judge might be given a discretion to enhance court-fees up to double the amount.

83. I see no reason why mortgage deeds should be put on a different footing to sales and leases as regards attestation.

86. Yes, the multiplication of law reports has interfered with speedy justice. None but authorised reports or actual judgments taken from the records of the courts should be citable.

Written statement of the Hon'ble Mr. Justice B. H. HEALD of the Rangoon High Court (not examined).

1. No answer.

2. (1) Dilatoriness of legal practitioners.

(2) Untrustworthiness of process-servers.

3. (1) Improvement in the professional conscience of legal practitioners.

(2) Lay down definitely that the absence of a legal practitioner shall not by itself be regarded as sufficient cause for an adjournment.

(3) Pay process-servers better.

4. No.

5. No.

6. No.

7. A standard of work for each class of court was drawn up some years ago and is I believe now being revised. An officer who allows his work to get into arrears owing to failure to come up to that standard should not be confirmed if on probation or promoted if substantively appointed.

If an officer who has been confirmed in any particular appointment fails permanently or repeatedly to work up to the required standard, that should of itself be sufficient ground for reducing him to an inferior post.

8. This is certainly so in Rangoon.

9. I do not think so. The jurisdiction of courts has lately been revised.

10. No.

11. Already provided for in the Burma Courts Act.

12. No.

13. I do not think so. I would not invest any.

14. I think that the experiment might be tried up to Rs. 20 in value—the orders to be subject to revision by the judge of the township court and not the township officer as at present. I must say however that I have a

poor opinion of the work at present done by village headmen, but they might possibly improve with practice.

15. I see no objection to small cause courts dealing with suits for the sale of mortgaged property or partnership suits within the pecuniary limits of their jurisdiction.

16. I have no experience of such summary procedure.

17. I would not invest sub-registrars with any jurisdiction.

18. In view of the present state of efficiency and legal attainments of the district and subordinate judges, I do not think that the right of appeal is granted in too many cases.

19. (*a*) No. On the appellate side a certificate is already necessary.

(*b*) I approve of it.

20. Frivolous second appeals are filed but I do not think that the proportion is very high. I do not approve of the suggestion.

21. No.

22. Yes, in the High Court and in some district courts.

23. I would restrict the right of revision strictly to questions of jurisdiction and points of law. I would accept the suggestion that in cases of revision under the Provincial Small Cause Courts Act the decretal amount should be deposited before a revision petition could be presented. I would not accept the suggestion that there should be no revision of interlocutory orders which can be attacked in appeal. My reasons are given in 11 L. B. R., 65.

24. No suggestions.

25. It might be tried.

26. I think that plaints are as satisfactory as can be expected in view of the present attainments of legal practitioners.

27. I do not think so. Rule 14 of Order 7 is not infrequently disregarded.

28. In towns—yes. Outside towns—No. Village officials could not be used.

29. Yes, certainly.

30. I would accept the suggestion.

31. I think that, on the whole, issues are as well framed as can be expected in view of the attainments of the judges in subordinate courts.

32. There is a tendency to avoid the examination of the parties before issues are framed and if they are examined, to treat their statements as evidence in the case. Little use is made in subordinate courts of Order 11 and practically none of Order 12. The reason is the ignorance of the lower grades of legal practitioners and the remedy an improvement in the training of practitioners.

33. I am in favour of the examination and cross-examination of the parties before the framing of issues as part of the trial.

34. I do not think that it is strictly enforced. The difficulty is that parties are reluctant to have their witnesses arrested and do not desire to have the provisions of Rules 10 to 13 enforced. The remedy is, I think, for courts to fine witnesses under Rule 12 *ex suo motu* which they do not do at present.

35. The only suggestion which I can make is that the court might be empowered to refuse to summon particular witnesses unless satisfied by affidavit that their evidence is material.

36. I would accept the suggestion only in respect of uncontested succession certificate proceedings and *ex parte* proceedings.

37. I do not think that the suggestion is practicable.

38. I have had no experience of the working of that order.

39. So far as Burma is concerned no change is necessary.

40. I think that it is possible and desirable to throw on legal representatives the duty of getting themselves brought on the record in suits affecting the estate in which they are interested. I should be inclined to provide that any decree against the legal representatives of a deceased person binds the estate of the deceased as against every person who is or claims to be a legal representative of the deceased and who had notice of the suit.

41. I do not think that much delay is so caused. Burmans have little if any objection to being appointed guardians *ad litem* for their minor relatives. Guardians so appointed are not proper guardians in any strict sense of the word but they are as proper as can be expected in the state of civilisation of the country and they are better than the court bailiff who is usually appointed if there is any difficulty.

42. I do not think that it is at present abused.

43. I do not think that on the average judgments are unduly long.

44. Yes, usually.

45. In all subordinate courts dates are so fixed.

46. In the judicial commissioner's court the pleaders used to note on appeals and revision cases the time likely to be needed for hearing and I think that in most courts pleaders are asked how long they expect their cases to take.

47. It is not the length of the examination on commission which delays trials in this province, but the fact that most commissions have to be issued to those parts of the Madras Presidency from which the Chettiars come.

48. I doubt whether a system of allowing adjournments only on written application supported by affidavits is practicable. The amount of "day costs" if costs are awarded is sufficient, but practitioners are reluctant to claim day costs, lest on another occasion they should be claimed against them.

49. The reason why suits are not tried continuously is that witnesses are frequently absent. Improvement in process serving and punishment for absence when served would effect improvement.

50. Yes.

51. I do not think that there are sufficient commercial suits outside Rangoon (and perhaps Moulmein and Bassein) to make it worth while.

52. No suggestion.

53. No objection, but I have no experience of any necessity for the extension.

54. I would accept the suggestion provided that these matters were reported to the court which passed the decree.

55. No opinion.

56. No opinion.

57. No particular views.

58. I should be inclined to restrict payment to payment into court.

59. I think this might be allowed and that the first proviso might be omitted if it were laid down that the affidavit must state that notice of the transfer had been given to the judgment-debtor.

60. I should object strongly to its deletion.

61. I would not delete the rule.

62. I would not accept a provision that there should be no stay in the case of money decrees.

63 and 64. I think that one notice would be sufficient and that it might be served on the advocate. I do not approve of issuing the order of attachment and the proclamation of sale at the same time.

65. No.

66. I approve of the suggestion that all encumbrancers should be necessary parties to mortgage suits and that the rights of all encumbrancers should be finally determined in the suit.

The difficulty is that mortgages by deposit of title deeds are not registered and are not easy to trace.

67. I would invest appellate courts with power to award compensation, in cases where execution has been stayed on insufficient grounds and I would do so by provisions analogous to those of section 95 of the Code.

68. Such injunctions are rare and I do not consider any action necessary.

69. I would not approve of any devolution.

70. I do not think so. I do not consider any action necessary.

71. No suggestions.

72. (1) I doubt whether it is necessary.

(2) I would not make the proposed alteration.

73. I see no objection to uncertified secondary evidence being admitted by consent.

74. The period allowed for suits for specific performance should certainly be shortened. I consider six months from the time when complete performance became possible ample. The present provisions are practically a dead letter since in most of the cases which come before the courts performance has never been demanded or refused until shortly before the date of the suit.

75. I would recognise only adoptions effected by registered deed.

76. Yes. In the case of immovable property exceeding Rs. 100 in value.

77. I have seen no indication of any necessity for such a provision.

78. I would abolish the doctrine of part performance and recognise only conveyance by registered deed in the case of immovable property worth Rs. 100 or more. I would abolish the recognition of mortgages by mere deposit of title deeds.

79. I should like to see this principle introduced but I doubt if it is practicable.

80. I do not think this practicable.

81. I would not allow the parties to a document to offer evidence to contradict its express terms.

82. I think that some such provision is desirable but it is difficult to know whether or not a suit or appeal is frivolous until it has been heard and at that stage there would be difficulty in recovering additional court fees.

83. I do not think so.

84. No suggestion.

85. No suggestion.

86. Yes. I would prohibit reference to unauthorised reports.

87. No suggestions.

Written statement of the Hon'ble Mr. Justice W. CARR of the Rangoon High Court (not examined).

6. I do not think so. Transfers are not nearly so frequent as they used to be.

7. I should prefer to leave this alone. The fixing of such a standard would tend to subordinate quality to quantity, and in the end bad quality causes much delay making remands more frequently necessary on appeal. I will deal with each case on its merits.

8. I think not. There are of course delays owing to pleaders being engaged in other courts, but these are less than if courts were more scattered. In this respect concentration of courts is advantageous.

9, 10 and 11. No.

12. I do not think so. Most district judges in Burma have additional judges to whom they can delegate work which it is not necessary for them to do themselves, and I do not think any additional facilities for such delegation are required.

13. No.

14. No.

15. No. Leaving aside the Rangoon small cause court, of which I know little, I would not extend small cause jurisdiction at all. I think the subordinate courts already have more extensive small cause powers than they are fit for.

17. I do not think anything of this kind is practicable at present in Burma.

18. No.

19. In this court single judges do not hear first appeals and in second appeals there is a Letters Patent appeal only when the judge certifies the case a fit one for appeal. I think this is sufficient and I would not curtail the right. We have no Letters Patent appeal from orders in revision.

20. There are a good many appeals, both first and second, filed which have no chance of success. I do not think any special measures are required. Order 41, Rule 11, should be sufficient.

22. In recent years the use of this provision has been greatly increased owing to the insistence of the Chief Court. Further increase is still possible but nothing beyond continued insistence by the High Court is necessary.

28. I am not in favour of service by post. It would be subject to the same abuses as the present system, with the additional disadvantage that the courts have no control over postal officials.

It might be possible to use village officials to some extent but a scheme would have to be very carefully framed, and I am not sure that it would be successful.

29. I think not.

30. I think this undesirable. Pleaders in most cases are not in sufficiently close touch with their clients to be able to render much assistance. Moreover in the mofussil a process-server takes out a considerable number of processes on each trip and it would not be possible for him to be accompanied by representatives of all the parties concerned.

31. Insistence on Order X seems to be the only remedy.

32. Order X is much neglected and Orders 11 and 12 are very little used.

33. This might be of some use, but it should be confined to examination in chief.

36. I am strongly opposed to this proposal. I have no faith whatever in affidavits in this country. The proposal would reduce proceedings to a farce.

37. I do not think this desirable. It would introduce extra grounds of appeal. After all the matter depends mainly on the personality of the judge and extra powers would not help a weak judge. He would either not use them at all or would do so spasmodically and as often as not at the wrong time.

43. On the whole I think not. I would not interfere by any general order. This is a matter depending on personal idiosyncracy. Any particular case of excessive verbosity can be dealt with as it arises.

44. In a considerable proportion of cases they are not, but I would not interfere generally. When a suit is decided on a preliminary point the decision is often wrong. This necessitates a remand and the ultimate delay is very great.

45. Yes.

72. See answer to Question 83. If the provision requiring attestation were withdrawn it would not be necessary to call an attesting witness. But I see no reason for inverting the ordinary rule of evidence in regard to mortgage deeds. A party relying on any deed which is not admitted should be required to prove it, as now.

78. I do agree that the doctrine of part performance practically negatives the provisions of the Transfer of Property Act as to creation of titles in immovable property. See Jogendra Krishna Ray *v.* Kurpal Harshi & Co., 49, Calcutta, 345, which represents the position now arrived at.

The High Courts in India are now almost, if not quite, unanimous in applying this doctrine. I think that this is due to a recognition of the gross injustice that would in very many cases result from the strict enforcement of those provisions. The conclusion I draw is that those provisions are not suited to the conditions prevailing in the country. I would therefore make the Act applicable, if at all in Burma, only to the large towns, *viz.*, Rangoon, Moulmein, Bassein, Akyab and possibly Mandalay.

But if the Act is to remain in force I would not allow scope to the doctrine of part performance. I would still allow equitable mortgages in the large towns.

76. No. I think this would be most undesirable and would only increase litigation and lead to much injustice. There are very numerous partitions in Burma which never come before the Courts at all.

I would say, however, that in my opinion judicial decisions have unduly extended the meaning of the word "partition."

77. No. This proposal too, I think, is most undesirable.

79. No. This would only increase existing evils.

80. No. Most certainly not.

81. I think this system is bad. It is based on an infraction of section 92 of the Evidence Act. We in Burma are not very greatly troubled with *benami* transactions and I think the system might be prohibited. Whether this should be done in India, where the system appears to have taken deeper root, is a question on which I can express no opinion. The abolition of the system would to some extent, but not very greatly, expedite execution proceedings.

83. No. I see no necessity for this provision.

86. I think so. Most subordinate courts are not supplied with a full set of authorised reports and even if they were, the judges would not have the time, or the capacity, to trace in them the most recent decisions. The result is that decisions are often based on rulings which have long been over-ruled.

I would institute a series of All-India reports in which would be reported only cases on questions of general interest. These cases should be selected from the authorised reports of the various High Courts by an editorial committee invested with full power of selection and condensation.

I would supply to subordinate courts only the All-India reports of the High Court to which the court is subordinate. I would then at any rate in regard to all courts other than High Courts, absolutely prohibit reference to cases reported elsewhere than in these two sets of reports.

At the beginning, exception would have to be made in respect of authorised reports prior to the institution of the All-India series.

87. No. The disadvantage of Codes is excessive rigidity and they tend in the case of some judges to prevent the exercise of common sense in cases not expressly provided for.

BIHAR AND ORISSA.

Evidence recorded at Patna.

PRESENT:

The Hon'ble Mr. Justice G. C. Rankin, Bar.-at-Law—Chairman.

The Hon'ble Mr. Justice L. Stuart, C.I.E., I.C.S.

Dr. F. X. DeSouza, I.C.S., Bar.-at-Law.

Diwan Bahadur Sir T. Desika Achariyar Avargal, Kt.

Mr. J. F. W. James, I.C.S. (District and Sessions Judge), Registrar, High Court of Judicature at Patna.

Syed Mohammad Hussain, M.L.C., Vakil, Bankipore.

Mr. C. V. Krishnaswami Ayyar—Secretary.

List of Witnesses examined at Patna.

Name.	Designation.
Wednesday, the 25th July 1924.	
*1. Rai Bahadur A. N. Mitra	Sub-Judge, Dhanbad.
2. Mr. Hasan Jan	Representative Vakils' Association, High Court, Patna.
Thursday, the 26th July 1924.	
3. Mr. T. D. Mukerji	Sub-Judge, Arrah.
4. Babu Kamala Prasad	Sub-Judge, Muzaffarpur.
5. Mr. Najabat Hosain	Sub-Judge, Purulia.
Friday, the 27th June 1924.	
*6. Babu Bhubaneshvar Prasad Pande, B. L.	Assistant Registrar, High Court, Patna.
7. Babu Raghubir Saran	Vakil, Arrah.
8. Mr. Abdus Shakur	Officiating Sub-Judge, Arrah.
Saturday, the 28th June 1924.	
9. Babu Bhagwati Saran Singh	Rais and Talukdar, Gaya.
10. Babu Gangadhar Das	Vakil, Patna.
*11. Babu Jogendra Chandra Mukerji.	Vakil, Muzaffarpur, Representative, Bihar Planters' Association.
Monday, the 30th June 1924.	
12. Rai Sahib Srivallav Das	Rais and Honorary Magistrate, Patna.
*13. Mr. S. B. Dhavle, I.C.S.	District Judge, Cuttack.

Tuesday, the 1st July 1924.

14.	Babu Jagat Pal Sahai	Pleader, Ranchi.
15.	Babu Shamal Das Chakravarti	Vakil, Monghyr.
16.	Khan Sahib Saghir-ul-Huque	Siwan (Saran).

Wednesday, the 2nd July 1924.

17.	Babu Janendra Mohan Datta	Pleader, Muzaffarpur.
18.	Babu Mohendra Prasad	Manager, Bank of Bihar, Chapra.
19.	Mr. R. Stuart King	Circle Manager, Darbhanga Raj, Muzaffarpur.

Thursday, the 3rd July 1924.

20.	Rai Bahadur Nishi Kanta Sen	Vakil, Purnea.
21.	Rai Bahadur Dalip Narain Singh.	Banker and Zemindar, Monghyr.

Friday, the 4th July 1924.

22.	Rai Bahadur Chowdhri Radha Govind.	Government Pleader, Ranchi.
23.	Rai Bahadur Jyotish Chandra Bhattacharya.	Vakil, Purnea.
24.	Rai Bahadur Devi Prasad Dhandhania.	Zemindar, Bhagalpur.
25.	Rai Bahadur Sarat Chandra Roy.	Vakil, Ranchi.
26.	Babu Surendra Nath Singh	Assistant Manager, Hathwa Raj, Member, District Board, Saran.

Saturday, the 5th July 1924.

27.	Rai Bahadur Radha Krishna Jalan.	Landholder and Merchant, Patna.
28.	Babu Jyotish Chandra Chakravarty.	Pleader, Cuttack.

Monday, the 7th July 1924.

29.	Babu Sham Narain	Central Nazir, District Court, Patna.
30.	Babu Manmatha Nath De	Balasore.
*31.	Mr. M. Yunus, M.L.C.	Bar.-at-Law, Patna.

Tuesday, the 8th July 1924.

32.	Babu Ram Kishore Jha	Vakil, Darbhanga.
33.	Jagannath Saran	Vakil, Chapra.

Wednesday, the 9th July 1924.

*34.	Mr. P. C. Manuk, Bar.-at-Law.	Representative, Bar Association, Patna High Court.
*35.	Babu Naresh Chandra Sinha	Representative, Vakil's Association, High Court, Patna.

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* Written statement and oral evidence printed.

Rai Bahadur AMRITA NATH MITTER, Subordinate Judge, Dhanbad.

Written Statement.

1. The periods reasonably required, having regard to the habits and customs of the people of the province, for the disposal of the different classes of civil proceedings are:—

A. *(i) High Court.*

Original suits.—There is no Original side in the Patna High Court.

First appeals.—Ordinarily it takes about six months to get a first appeal ready. For heavy appeals, particularly those in which the exhibits are numerous, this time limit is sometimes exceeded.

Second appeals.—I should think two months would be quite ample for the purpose.

Miscellaneous appeals.—Miscellaneous first appeals might be got ready in about four months and miscellaneous second appeals in about six weeks to two months.

In the Patna High Court, the cost of paper books is promptly realised and their preparation afterwards does not give any trouble. The delay in the disposal of the cases arises from congestion of work before the Benches.

(ii) District and Subordinate Courts.

Original suits.—The District Courts very seldom take up original suits. In the Courts of Subordinate Judges contested title and money suits do not generally become ready under six months. In cases where there is a local investigation to make, the period sometimes goes beyond a year.

Regular Appeals; Civil Miscellaneous Appeals against Orders.—I should think two to three months are sufficient. As a matter of fact, however, the hearing takes very much longer for want of Court's time.

Small causes.—About ten to twelve weeks.

(iii) Munsif's Courts.

Original suits.—Three to four months and six to eight months where a local investigation is necessary.

Small causes.—Six to eight weeks.

B. Claim proceedings: Four to six weeks.

2. The period actually taken for the disposal of these proceedings in many cases exceeds the reasonable limit as given by me. To my mind the main cause of delay is the want of the Court's time to enable it to attend to and give a prompt hearing in all the cases before it. The other causes are:—

(1) The present procedure with regard to substitution of parties and the appointment and appearance of guardian *ad litem* where the natural guardian has not come forward with the object of delaying the proceedings at the instance of some of the major defendants.

(2) Delay in filing written statement.

(3) Interlocutory applications, appeals from orders passed thereon and stay by the Appellate Court.

(4) Want of due care and attention on the part of the majority of lawyers to the cases placed in their hands before the same are actually taken up for hearing.

(5) Neglect and failure of the parties and their pleaders to take advantage of the provisions in Orders XI and XII of the Code of Civil Procedure.

(6) General impression amongst the litigant public that their cases would not be taken up before a certain period so that they do not care to get themselves ready before such time for fear of incurring unnecessary costs in bringing their witnesses to Court.

(7) Tricks and contrivances of a party having no foundation for his claim or defence to harass and delay the other side as much as possible.

(8) Needlessly protracted hearing in some cases due to—

  (a) Long and irrelevant cross-examination and long arguments by lawyers where they get daily fees.

  (b) Lack of firmness in the Court in checking irrelevant questions, particularly when these are indulged in by lawyers not within its disciplinary jurisdiction.

  (c) The mode of recording evidence *in extenso* except in summary cases and rent suits and the present method of proving entries in the books of accounts.

  (d) Want of a proper provision for duly penalising a party proving obstructive in the matter of admission of documents and of dispensing with formal proof in most obvious cases. Order XII, Rule 4, of the Code of Civil Procedure is not sufficient.

3. I would suggest the adoption of a more abbreviated form of taking down the evidence except in pure title suits and the employment of shorthand typists to record evidence *in extenso* where necessary, the presiding officer making a memorandum only of the substance of the evidence. The judgments should be shorter and shorthand typists should be provided for taking them down from dictation. The curtailment of the powers of the Appellate and Revenue Courts in the matter of interlocutory applications and more particularly in granting stay of proceedings is necessary.

4. *Munsifs.*—I do not think there is any case for altering the present method of recruitment of Munsifs but I would insist upon previous practice at the Bar for a substantial period. Under the rules of the Calcutta High Court the period of qualifying practice is three years. It has been reduced to one year in the Patna High Court and under the new scheme which is about to be introduced no previous practice will be required. In my opinion, practice at the Bar is absolutely essential and I would revert to the Calcutta rules. The experience at the Bar, however, briefless it may be, is a valuable asset in the equipment of a judicial officer and it gives him a peculiar insight into things which is of immense assistance to him in deciding cases.

Subordinate Judges.—These posts should be filled up by promotion of deserving Munsifs.

District Judges.—These posts are now filled up by appointment of the members of the Indian Civil Service, a small proportion of the District Judges being recruited from the Provincial Judicial Service and from the Bar. There should be no direct recruitment from the Bar, as the necessary Bar qualifications are possessed by the members of the Provincial Judicial Service. The present method of recruitment from the Indian Civil Service is unsatisfactory. What is now done is to appoint junior members of the service without any previous civil experience and sometimes even without much criminal experience, simply on the basis of their length of service. I think they should have a preliminary training in civil work before they are appointed as District Judges. They should work as Munsifs for an appreciable time and as Subordinate Judges for at least three years. If their work proves satisfactory, they should then be tried as District Judges. An inefficient and incompetent Judge at the head of the district administration cannot command proper respect with the subordinate judiciary whose work he has to inspect and supervise.

Among the High Court Judges there should be at least one member of the Provincial Judicial Service. He should be able to advise the other

Judges, on the difficulties and drawbacks of the actual work of the administration of justice in the Mofussil Courts.

The appointment of Subordinate Judges and District Judges should entirely rest with the High Court. The High Court is the best judge of the work of its officers and there should be no other authority to revise or modify its decisions in regard to selections to particular posts. As to the appointment of High Court Judges, the power of the Local Government should be curtailed. The selection should be left to the High Court and the appointment should on its recommendation be made by the Central Government. If efficiency is to be secured race considerations must be entirely laid aside in filling up these superior judicial posts.

5. I do not think that any special training in the case of Munsifs appointed after a qualifying practice of at least two years is necessary. For learning the office routine a training of six to eight weeks would be enough.

6. I am positively of opinion that it is so. The normal period of a judicial officer's stay at any particular station is fixed at three years. He is sometimes transferred even before completing this period. He has then only just begun to be useful after getting conversant with the litigant public and the character of the litigation within the local limits of his jurisdiction. His experience is thrown away and he begins over again in his new place. In my opinion, the services of judicial officers would be better utilised by keeping them at a place for as long a period as possible.

7. It is impossible to prescribe a standard of efficiency for an officer as regards the amount of work done. It is quality and not quantity of work as indicated by the number of contested suits disposed of, that should alone be considered in judging the efficiency of an officer.

8. I do not think so. There is no dearth of pleaders to make it necessary for a case being indefinitely put off owing to the engagement elsewhere in any particular case of a member of the legal profession. We have sometimes to wait as a matter of courtesy but there must always be some give-and-take between the Bench and the Bar.

9. I do not think so. An enhancement of jurisdiction of the Munsifs would re-act upon the whole file and the disposal of the petty cases would suffer.

10. No. I would only increase their jurisdiction in Small Cause Court suits up to Rs. 250 in the case of Munsifs of at least 5 years' standing.

11. No.

12. The administrative work of the District Judge in connection with the process-serving, accounts, record room, and copying departments is already distributed among the subordinate judicial officers at headquarters. What he has now got to do is to manage his own correspondence and returns. Probably this part of the work he cannot delegate to any other judicial officer. The appeals are mostly transferred to the Subordinate Judges. I do not know how much of a Judge's time is occupied in the disposal of cases under the Probate and Administration Act, Succession Certificate Act, Insolvency Act and Land Acquisition Act. In some places, cases under the first two named Acts are taken up by subordinate judicial officers if there is no contest. These do not in fact take up any appreciable amount of time and so a transfer of the work though sometimes convenient to the public would mean no relief to the District Judge.

13. Yes. Only selected officers should be so invested.

14. There are no Village Courts in this province.

15. I would not extend the scope of the Provincial Small Cause Court Act. Mortgage suits and suits relating to the partnership should be tried in the ordinary way but I would adopt the mode of recording evidence as in rent suits.

16. No.

17. No. There is a good deal of corruption among the Sub-Registrars as a class and the experiment is simply unthinkable.

18. I do not think that the right of appeal, at present allowed, should be curtailed unless there is a change in the existing system. My idea is that the Primary Court should either consist of two stipendiary Judges or one Judge assisted by a Jury and that the decision of such Court on facts should be final, an appeal being allowed on law points only. In that case, the work of the High Court will considerably decrease. A single Judge might then be employed to do the ordinary appellate work in a larger number of cases than at present. That would lessen the present gamble in litigation and prevent useless waste of time in the Appellate Court over the weight to be attached to the testimony of a particular witness against the views of the Trial Court which had the opportunity of observing him while under examination.

19. (*a*) I would not curtail the right of appeal under the Letters Patent. There is always a preliminary hearing before such appeals are admitted and that means that only cases in which there is a substantial question of law go to a final hearing.

(*b*) In the Patna High Court, there is no appeal against an order passed in revision by a single Judge. The other branch of the question has already been answered.

20. I think so. They are mostly weeded out at the preliminary hearing under Order XLI, Rule 11, of the Code of Civil Procedure. No further provision is necessary. I would not curtail second appeals in title suits, as suggested on any valuation basis. The money value put upon the property in suit for fiscal and jurisdictional purposes does not often represent what it actually means to the litigant.

21. No. When a stay of execution is asked for, security in cash is frequently demanded and beyond that I would not go.

22. This is done in the High Court in second appeals and miscellaneous appeals. Some of the District Judges give a preliminary hearing under Order XLI, Rule 11, of the Code of Civil Procedure in miscellaneous appeals. It would not mean a saving of labour for the District Judge to exercise the power more freely for he would have to give a hearing and to write out judgment when he dismisses an appeal. If he admits it so much labour goes for nothing. His work would appreciably increase.

23. I am under that impression but I would not express myself one way or the other. When a stay of proceedings is asked for, no order should be passed until proper security to the satisfaction of the Primary Court is offered and a sum named by the Bench is deposited for payment to the opposite party by way of penalty in case the application eventually fails. The original records in pending cases should not be called for—that would mean holding up the proceedings in the Subordinate Courts which is what is often aimed at. Copies from the records should instead be used. I would favour both the suggestions made in the second part of the question.

24. I would change the present procedure thus:—

Original suits.—(1) The decision of the Primary Court on facts should be final provided it is made to consist of two Judges or of one Judge and a Jury (*vide* answer to Question No. 18).

(2) The provision contained in Order XVIII, Rule 13, of the Code of Civil Procedure, as to making a memorandum of the substance of the evidence given by each witness should be made applicable to cases in which an appeal is allowed except in pure title suits (*vide* answer to Question No. 3).

Small Cause Court suits.—The provisions in Order XX, Rule 4 (1) should be strictly adhered to. The law does not require reasons for decision being given. The inspection remarks of some of the District Judges have created the impression that such reasons should be given. That makes Small Cause Court Judges write out regular judgments. This is useless waste of time and energy and that only for a few cases that are ultimately taken to the High Court in revision. The Hon'ble Judges can very well deal with the law points even without the benefit of the trial Court's reasons.

25. I would suggest the addition of a provision enabling the Court to compel the attendance of a defendant not being a female where it considers it necessary to do so in order to be satisfied about the sufficiency of the service and also where there is reason to think that service is being avoided. In the case of females the recognised agent or any adult male member of the family might be similarly brought before Court.

I should not think it would be desirable to apply the procedure under section 106 of the Transfer of Property Act to civil suits.

27. I do not think so.

28. The use of the Post Office for the service of notices and summons would not be more effective. The postal peons would be as unwelcome as the Civil Court peons when it is known that they are also agents for service of processes. They would be equally open to tips either from the plaintiff or the defendant or from both and the result would only be a transfer of corruption from one department to another with the additional disadvantage that the Court would not be in a position to punish their delinquencies. It would be a pity to place temptation and to try the honesty of a department which has hitherto borne a good name.

I have no confidence in the village officials generally. Regard being had to rival factions in a village it would be unsafe to entrust the service of a process to a person who happens to belong to a party antagonistic to that of the village officials. As regards his own party men, non-service is likely to be the rule. Besides the Court would have no control over such village officials, and that itself is enough to reject the idea. Considered from the point of view of corruption, they would undoubtedly have their own prices and in a country where public opinion is not very strong against corruption, an experiment of that kind should never be attempted.

29. This would hardly be of any use. For those against whom suits are frequent, the appointment of a recognised agent to accept service is already open. To my knowledge, no one has so far taken advantage of the provision. After a party has once appeared, there is no further difficulty about the service of subsequent processes which may be made on his pleader. A proceeding in execution is popularly regarded as separate from the suit of which it is a continuation. It might be throwing needless responsibility on the pleader retained in the original suit to make him accept notices issued in execution. But it may be tried in addition to ordinary service on the judgment-debtor himself.

30. This is in practice already done in some of the Courts of the province when no note is made on the top of the original process as to where the identifier is to be found.

31. Issues should be framed by the Court itself after a perusal of the pleadings. The Court scarcely finds any time to do so and the present practice is to accept the issues framed by the pleaders for the parties and to consider them only when there happens to be a dispute. At the hearing the striking out of unnecessary issues becomes often necessary.

32. Yes. The reason for this neglect so far as the provisions in Orders XI and XII are concerned is that the ordinary litigants have not yet realised the importance of these provisions and they consider them as quite unnecessary and useless. Accordingly, any request by their lawyers to take recourse to these provisions is looked upon by them with suspicion and distrust. For this reason, and probably also for the reason that they are not sufficiently paid for at this stage, the lawyers do not care to take the help of these provisions. There is another reason for the dislike of the litigants for these provisions. As soon as an application is made by a party he is met with a counter application from the other side, the result being that each party is required at that stage to show up his hand which he does not like. Each party is anxious to conceal his hand and to keep

the trump card for use at the last moment and to take his opponent by surprise. Hence they are avoided by both parties. The penalty again which is attached to an inspection of the opponent's documents is rather severe.

The Court cannot comply with the provisions of Order X, Rule 1, of the Code of Civil Procedure generally for want of time to make itself sufficiently acquainted with the pleadings and facts of the case in order to be able to put questions to the parties. The provisions in Order X, Rule 2, of the Code of Civil Procedure are sometimes followed with advantage by the Court at the time of trial.

I have no remedy to suggest and the matter should, in my opinion, be left to the parties and the Court.

33. The examination of the parties at the beginning of the trial would, in some instances, tend to minimise the calling in of irrelevant evidence and of witnesses unnecessarily. I would not agree to there being a hard and fast rule as to the examination of the parties before the summonses are issued or even before the commencement of the trial. That ought to be left to the convenience and discretion of the Court. It is only in a few instances that such examination produces any result.

34. Yes. Witnesses, who appear, are not required to be summoned again. Witnesses in Government and Railway service sometimes represent their inability to attend at the next hearing but a note requiring re-attendance on the summons is often sufficient.

35. Yes. I have no suggestion to make by way of a remedy. I would leave that to the good sense of the lawyers conducting the case.

36. I would not agree to this. Under Order XIX, affidavits are generally accepted in the proceedings under the Succession Certificate Act as also in proceedings for making the decree absolute in mortgage suits. As to other matters, referred to in the question, it would be unsafe to go upon affidavits. The service of a process is now proved by affidavits but false personation of the identifier deponent is not infrequent. Then again there would hardly be any saving in time of the Court which would have to go through the affidavits. The examination of a witness to prove the facts proposed to be inserted in the affidavit would not take longer and would besides check irresponsible persons being put forward just for the purpose of securing a decree for the plaintiff.

37. I would not agree to this, for the power would be liable to abuse. Probably to check diffuse cross-examination and going into unnecessary details it would be useful to empower the Court to set a hearing fee where the legitimate limit of honest cross-examination is exceeded.

38. No.

40. I do not see how this would improve matters if positive knowledge of the proceeding is mads a condition precedent to the duty sought to be cast on the legal representative. If he is already on the record, there is no trouble. If he is not, then a notice of suit would be necessary to be given. That would amount to the same thing as service of summons after substitution.

41. No.

42. I cannot say that the practice of granting *ex parte* injunctions and orders are not sometimes taken undue advantage of in this province but that is a preventible abuse which the Court can easily check if the Appellate Court is equally firm.

43. Yes. It is difficult to suggest a remedy. Some Appellate Courts set their face against big judgments while others characterise anything shorter as sketchy and cryptic. It is difficult to drive clear of either of these views.

44. Yes.

45. Dates of cases ripe for hearing are fixed by the Judges themselves. It does not matter whether the Judge or the Bench clerk fixes the dates under his general instructions in the earliest stages. It does not result in delay in disposal of cases.

46. Yes, this is done. I would not frame any rule in this matter. Other ready suits have to be fixed for the same dates as stand-by or it might happen that on the collapse of one case, the Court would go without work for days. This is no doubt inconvenient to the parties but there is no help for it. That being the case, consultation with the pleaders is only necessary for the purpose of getting an idea for the arrangement of the file which the Courts would themselves be anxious to do without any rule.

47. Yes. I would do away with the limits prescribed in Order V, Rule 4, and Order XVI, Rule 19, of the Code of Civil Procedure and reduce the number of commissions. I would control the length of the examination by the imposition of a hearing fee to be paid to the opponent's pleader where the cross-examination goes beyond legitimate bounds. I would not add to the powers of the commissioners and give them the right to disallow questions. I would not confine the cross-examination to written interrogatories except where it is found that the cross-examination is being carried on at an inordinate length.

48. No. Affidavits are easy enough to procure. Frivolous applications can always be checked by payment of substantial costs in cash to the other side.

49. Yes.

50. The High Court does but the District Judges do not find time to inspect Subordinate Courts even once a year.

51. I do not suppose. In this District the commercial suits cause more delay than the ordinary suits and for this the mercantile firms concerned are responsible. They have their head offices in Calcutta and they place their cases in charge of their Calcutta solicitors who engage pleaders here. The pleaders write to the solicitors for any information or paper; the solicitors refer the matter to the firms in Calcutta; these firms refer the matter to their colliery people who supply the information to their head office; the head office then informs the solicitors, who, in their turn, write to the pleaders. This is the reason for the delay. Probably, the firms themselves are not keen on expedition.

53. There is no harm.

54. The power of transfer for execution should always belong to the Court which passed the decree. The Court to which the decree is transferred may be invested with the other powers referred to in this question.

55. That would be desirable.

56. (*a*) and (*b*) I would not advocate any change and unnecessarily restrict the right of the decree-holders to realise his decree from judgment-debtors whose failure to pay is often due to poverty. It would work hard against both the decree-holder and the judgment-debtor.

(*c*) This is desirable.

Last portion.—That would not be desirable. Instances are not rare where decrees are obtained by suppressing all processes and the defendants come to know of such suits after execution is started. At the end of six or twelve years the defendant may be seriously prejudiced in his honest endeavour to set aside a fraudulent decree. Then, again, a satisfied claim may be dishonestly brought forward where the original decree-holder or the judgment-debtor is dead.

57. This may be done.

58. This would check frivolous objections. I would, however, give a discretion to the Court to consider the plea of satisfaction in other cases to protect unsophisticated and illiterate village folk.

59. There is no objection but I would not delete or modify the second proviso to Order XXI, Rule 16, of the Code of Civil Procedure.

60. This should not be deleted.

61. I would leave the rule as it is. A notice under Order XXI, Rule 22, of the Code of Civil Procedure serves as a great check on fraudulent execution of decrees.

62. I think it would. I would substitute "may" for "shall" in the second line in clause 1 of the Rule.

63 and 64. There is perhaps no provision requiring notice of execution to be given to the judgment-debtor except under Order XXI, Rule 22, of the Code of Civil Procedure. The next step is the attachment of the property. If the writ of attachment is personally served and if in it the date of the settlement of sale proclamation is given, then in that case, a notice under Order XXI, Rule 66, would be unnecessary. A copy of the sale proclamation may be served on the judgment-debtor. Order XXI, Rule 66, requires modification. The enquiry which is required to be made when the judgment-debtor puts in a higher valuation, frequently delays proceedings. I would amend Rule 66 and provide for the insertion of the prices as given by the decree-holder and the judgment-debtor.

There is no objection to the writs of attachment and sale proclamation issuing simultaneously, but in that case, the provision for inserting the price of the property sought to be sold will have to be omitted. In fact, the price seldom is of any assistance to the intending bidders.

Notice of execution may be given to the pleader who appeared for the judgment-debtor in the suit by showing him the order-sheet of the execution case. Notice under Order XXI, Rule 22, of the Code of Civil Procedure may be served on him subject to the proviso that if on hearing the pleader the Court considers personal service of such notice on the judgment-debtor desirable it shall be so served.

65. No.

66. I would not favour this proposal. It might jeopardise the interest of the prior mortgagees. I would not give any such right to a puisne mortgagee. The procedure will needlessly complicate mortgage suits.

Time within the period of six months is always granted. A final opportunity for redemption is not necessary to be given seeing that the result can be attained by payment after the date of sale and even afterwards.

In simple mortgage suits, there is no necessity for drawing up a separate final decree if the wording of the form is suitably altered, or the provision as to period of grace is done away with. A separate personal decree seems to be necessary. The question of personal liability need not be gone into until the necessity for it arises after the mortgage security has been exhausted.

67. Yes. I would suggest the stay of proceedings be made conditional upon furnishing proper security and in the case of money decrees on the deposit of the decretal amount either in cash or in Government securities. I would be for investing Appellate Courts with power to award exemplary compensation in cases in which stay of proceedings has been asked for on insufficient grounds. I would set the limit at Rs. 1,000.

68. Yes.

72. The provision may be changed as proposed but when the validity of the bond is disputed, the plaintiff should call an attesting witness and prove the bond in the usual way.

73. It is desirable. It is difficult to give an estimate of the time to procure certified copies; ordinary copies are issued within 5 days of the delivery of stamped folios. The delay occurs in tracing the particular records.

76. Yes.

77. Compulsory registration in such cases is desirable.

78. The doctrine of part performance as pointed out practically negatives the provisions of the Transfer of Property Act and its scope should be restricted as far as practicable. Every agreement for transfer of immoveable

property of the value of Rs. ·100 or more should be in writing and except for the purpose of basing a suit for specific performance or for using it as a defence as long as that right is not extinguished, no such agreement should be accepted in evidence. I would not make registration compulsory as that would needlessly inconvenience the commercial community.

79. This would work hardship in many cases. Endorsements on the original deeds should also operate as a valid discharge.

80. I should be quite prepared to accept the principle laid down in this question but the remedy suggested would not meet the by far larger number of cases of half literate persons whose signatures consist of a few crude strokes which can easily be imitated without any chance of detection from a comparison of handwriting. I would in any case insist upon the thumb-impressions in limitation to any such rule.

81. This would be a violent change. If it could be brought about, it would produce the result aimed at.

82. No. The more the rate of court-fees is increased, the greater will be the chance for unscrupulous rich men to oppress the poor. I should think it would be desirable to empower the Court to throw out frivolous suits and applications after a preliminary hearing, either before or after the issue of processes. This would have effect. At present, any application, however, palpably absurd it may be, has got to be entertained resulting in needless delay particularly in execution proceedings.

83. There is absolutely no necessity or jurisdiction for treating mortgage deeds on a footing higher than sale deeds and leases.

84. It is difficult to think of any effective provision of law to prevent champerty and maintenance. It will always be evaded.

86. Yes. I would absolutely prohibit the issue of all law reports excepting those published under authority of the High Court and the Government. I would reserve the copyright in judgments to Government.

87. I would recommend the immediate codification of the Hindu and Muhammadan Law.

In conclusion I would recommend the empowering of the Civil Court to try offences in connection with its own proceedings. I also think that adequate provision should be made in the Code of Civil Procedure to punish cases of contempt of its authority. The Code now gives power only in certain specified matters but it should be more general so as to cover other cases as well and speedier and more effective in its application.

Rai Bahadur AMRITA NATH MITTER, Subordinate Judge, Dhanbad, called and examined on Wednesday, the 25th June 1924.

Chairman.—You are a Subordinate Judge at Dhanbad?

Mr. Mitter.—Yes.

Q. You have been good enough, I see, to give us answers to questions in our questionnaire and I do not want to take you all over it again. We have the benefit of your considered opinion in writing and now I would like to ask you things arising out of that. You see, of course, a good deal of work of Munsifs in your district?

A. Not at present.

Q. Do you hear appeals from Munsifs?

A. When I was at Ranchi I used to hear appeals from them.

Q. What is the general system in Patna as regards that matter? Do the District Judges hear most of the Munsifs' appeals or are they mostly heard by the Subordinate Judges?

A. About 50 per cent. of the appeals are heard by the Subordinate Judges —I can say that roughly.

Q. That is you have had experienec of Munsifs' work in Bihar in other places?

A. Yes.

Q. What is the general opinion about the way in which the Munsifs do their work? Do you think that in Bihar they are in general competent?

A. Yes, they are in general competent.

Q. Have you noticed any particular difficulties that call for attention generally?

A. Generally the administration work of the Munsifs calls for attention.

Q. You think that what is wanted is more supervision?

A. Yes.

Q. That is as actual lawyers deciding cases they do their work very well?

A. Yes, Sir.

Q. In this province have you had many new appointments to the position of Munsifs in recent years?

A. I am not in a position to say that.

Q. You probably can tell me as to whether Munsifs are appointed in this province without having taken any Law degree?

A. No, Law degree is always insisted on.

Q. You follow the Bengal system, I take it, ever since this province was made a separate province?

A. A probationary system has been introduced under which lawyers are taken directly after they have passed their law examination and then they are put on probation for two years, at the end of which they are entrusted with judicial work. For two years they would be learning work under experienced Subordinate Judges or District Judges.

Q. When was this system introduced?

A. Only about a month ago.

Q. While they are on probation are they entrusted with decisions on any matters?

A. No, they are not permitted to take up any judicial work during those two years.

Q. What do they do when they are attached to a Subordinate Judge or a District Judge?

A. I have no experience of that. Probably they have to learn administrative work first of all and then they have to sit with the District Judge or the Subordinate Judge and follow cases.

Q. How long does it take a man to become a Subordinate Judge in this province?

A. Probably the promotions have been rapid and many Munsifs have got on to the position of Subordinate Judges after 12 to 14 years' service.

Q. Is there any such thing as direct appointment to the Subordinate Judge's post?

A. No, Sir.

Q. I think in late years there has been one instance or perhaps more of direct appointment as District Judges?

A. Although the Government in their communiqué stated that there would be two direct appointments there has been only one appointment so far.

Q. As regards District Judges, what is the position here? Do they become District Judges after a short experience as Joint Magistrates or after what experience?

A. They work as Assistant Magistrates and Joint Magistrates before they become District Judges but they get no previous civil experience.

Q. How many years' service does a civilian officer have before he becomes a District Judge?

A. I cannot say, sometimes six years and sometimes nine years.

Q. As regards Small Cause Court powers, I take it that these are conferred personally on individual officers?

A. Yes.

Q. When a Munsif begins, is he usually given any Small Cause Court power?

A. No.

Q. When does he get it?

A. After five years.

Q. What power does he get?

A. Up to Rs. 50.

Q. How is that increased?

A. Then six months or a year afterwards he gets up to hundred rupees.

Q. Above Rs. 100 do any Munsifs exercise any Small Cause Court power?

A. Yes, in some cases the jurisdiction is extended to Rs. 250—that is the maximum.

Q. In few cases I think?

A. Yes, only where the work demands it because the same Munsif when transferred to some other place may be vested with power up to hundred rupees only.

Q. As regards Subordinate Judges, when a man comes as a Subordinate Judge what Small Cause Court power does he usually get?

A. If a Subordinate Judge acts for a permanent Subordinate Judge, who has got power up to Rs. 500, then he is given power at once up to Rs. 500.

Q. On the other hand if the necessity of the case does not require it, he is given a limited power?

A. Then he does not get any power at all. For one station one Subordinate Judge is given Small Cause Court power but Ranchi is an exception because there the Subordinate Judges do not get any Small Cause Court power.

Q. Why is that?

A. Because of the special conditions of the people. There you have to deal with aborigines and so this power is not entrusted to any Subordinate Judge though it is entrusted to a limited extent to Munsifs—up to Rs. 100.

Q. You have to deal with the Bengal Tenancy Act throughout the province?

A. No, only in Bihar province.

Q. You are under the Chota Nagpur Act?

A. Yes.

Q. Is there much difference between the working of the two Acts? I take it that under the Chota Nagpur Act much work does to the revenue officer.

A. Yes.

Q. All the rent cases are tried by the revenue officer and none of them go to the civil court on appeal?

A. No, they go to the Judicial Commissioner.

Q. To the Judicial Commissioner, Chota Nagpur?

A. Yes, he corresponds to a District Judge. The Judicial Commissioner cannot transfer these appeals to the Subordinate Judge.

Q. Is there any appeal from the decision of the Judicial Commissioner to the Patna High Court?

A. Yes.

Q. In those parts of Bihar where the Bengal Tenancy Act applies do you have a system by which in rent suits, if there is no question of rate of rent or a question of title, the Munsif's judgment is made final up to Rs. 50.

A. Munsifs are vested with special powers in those cases.

Q. They have to act under the Act as in Bengal?

A. Yes.

Q. Are these powers under the Act freely granted?

A. No, only special officers are granted these powers.

Q. I am asking about the way in which these powers are worked and whether they are given to Munsifs sufficiently freely.

A. I am not in a position to say that.

Q. Have you been at a place where in the ordinary way such power has been granted to you?

A. No.

Q. So you are not in a position to say whether it is possible to confer these powers more freely than it is done at present.

A. No, I am not in a position to say anything about that.

Q. You have put down certain causes of delay. What in your opinion is the chief cause of delay that requires attention in this province?

A. Congestion of files.

Q. That is to say, the Court has too much work to do?

A. Yes.

Q. How do you compare the Munsif's Courts with the Sub-Judge's Courts in that respect?

A. As regards congestion, the Munsif's Court cases are easier and they take up smaller amount of time.

Q. Do you think that the Sub-Judge's Courts are more congested than the Munsif's Courts?

A. In some places the Sub-courts are congested certainly.

Q. Speaking generally what is your impression?

A. I can't say.

Q. Do you have as regards your Munsif's Courts the same factor that we have in Bengal, *viz.*, that at the end of the Bengal year suits for rent liable to be barred by limitation are filed in large quantities?

A. Yes. But then the period of time is different. The agricultural year in Bihar begins in September instead of in April. That is the difference.

Q. In September you think that the Munsif's Courts are flooded with rent suits?

A. Exactly.

Q. Of which the vast majority turn out to be undefended?

A. Yes.

Q. How long were you a Munsif?

A. Twelve years continuously.

Q. Did you find that in all the places where you served?

A. I served in Bengal, Bihar and Orissa and that is my experience everywhere.

Q. I take it that the office work of the Court is congested to see to the plaints, writing decrees and making attempts for execution?

A. Yes, for the first part of the year during which these cases are decided, the office work is very much congested.

Q. Do people get the undefended cases disposed of as quickly as possible?

A. Yes.

Q. Are such plaints filed at any time within 3 months afterwards or are all of them practically filed at the same time?

A. Limitation cases at the end of the agricultural year are filed on the last day of the year.

Q. Do they all get the first hearing immediately?

A. No. The cases are distributed.

Q. So that in some cases, if the plaintiff files a plaint on a particular day in September, the summons will be returnable only in February or March.

A. No. It does not go so far as that.

Q. How long does it go?

A. December.

Q. That is to say, the man would get 3 months' before he is to appear and file a written statement.

A. Yes, in the last batch of cases 3 months and sometimes 2 weeks more. But the long vacation intervenes.

Q. How many weeks?

A. 5 weeks.

Q. That has to be accounted for?

A. Yes.

Q. When those cases come up, some of them would be contested and some not?

A. Yes. Some of them will be nominally contested. Those are decided on the very day of the defendant's appearance.

Q. That is to say, if it is a short matter, you will endeavour to dispose it of then and there?

A. Yes.

Q. It looks as though, if there was an appearance of contest, another date will be given.

A. Yes, because the parties will appear and apply for time to summon and produce the witnesses.

Q. Taking the case of a plaintiff filing a plaint in September, giving a return day in December, if the defendant wants to summon evidence and contest the case, what sort of adjournment would you give?

A. That depends upon the state of the file. Probably 3 weeks to a month he gets in the first instance.

Q. Would it be effective 3 months after that?

A. No. He applies for another adjournment; because he knows there will be no chance for the case being taken up.

Q. Apart from the defendant wanting an adjournment, what will be the earliest time, as a rule, in an ordinary case in an ordinary amount of congestion, it will take to come on effectively for hearing?

A. Really contested rent suits generally come on for hearing between the 4th and the 5th month in Munsif's cases.

Q. It will take about 4 or 5 months after the first hearing date.

A. No; after the date of the institution of the suit.

Q. In some cases 3 months would elapse before the first hearing.

A. Yes.

Q. If it is a contested case, how much longer time is required?

A. It depends as to how the High Court regards the case as an old one. In rent suits, the High Court would consider a case as an old one if it is not disposed of within 6 months. So, the Munsifs take care to dispose them of within that time.

Q. Do you know a good deal about the agricultural conditions of this part well? Have you ever suggested as a possible thing that the period of limitation should not count from the agricultural year but should be counted quarterly or any other suggestion to prevent all the cases tumbling over the Court at the same time?

A. I don't know much to enable me to give an opinion.

Q. Do you find that small title suits tried in Munsif's Court get left to the last and are the longest of all classes of work as regards the time taken?

A. No, difference is made between big and small title suits, but they are all left last of all. I mean usually they are attended to after the small cause cases and rent suits.

Q. You tell me from your experience what you think would be, as a rule, the time taken from the institution of a plaint up to judgment?

A. In really contested suits, it takes about a year—10 months to one year—making allowances for other causes.

Q. Now as regards the duration, how much time is taken for civil appeals in this province?

A. Several appeals are taken up after they have done with other original suits. In Bihar the civil appeal takes 4 months after the service of the notice.

Q. Now what is the practice in Bihar, do they transfer them at once or do they transfer after a long wait?

A. After a long wait when they become ripe for hearing.

Q. In what time should a civil appeal be ready after it is filed?

A. In about six weeks or two months after it is filed.

Q. Now when a civil appeal is transferred to the Subordinate Judge how old is it?

A. About six months. In six months the appeals become explanatory and it is then that attention is given to them.

Q. That is, they are transferred to the Subordinate Judge when they become explanatory?

A. No, just before they become explanatory.

Q. Then how long do they hang on before the Subordinate Judge?

A. Not more than a month. The position is this—if there are five or ten appeals fixed before the District Judge and he is engaged in sessions work then he transfers all these appeals to the Subordinate Judge. If the Subordinate Judge has time or if he can make time after doing his usual work then he hears all of them or some of them and fixes another date for the rest.

Q. Is there any District Judge at Dhanbad?

A. No, there is one at Purulia.

Q. Supposing you walk to the District Judge's Court at Purulia and ask him "Please show me the number of civil appeals not transferred to any one," then what number of appeals would you find there?

A. I have no experience of Purulia.

Q. You cannot say whether the District Judge there is able to cope with the work with the assistance of one Subordinate Judge?

A. I cannot say that. I know that there is one Subordinate Judge at Purulia to whom the District Judge transfers the appeals.

Q. What are, in your opinion, the chief recommendations which should be made to get rid of the delay, apart from appointing more Judges in the Court?

Q. I have stated them in my reply to the questionnaire. My first recommendation is that the mode of recording evidence should be modified except in title suits and in the title suits, as I have said, the services of shorthand typists should be utilised as in the High Court.

Q. Will you apply that to all the Courts or to the Courts of the Sub-Judges only?

A. To all Courts.

Q. Would you like the shorthand notes of the evidence to be taken down in vernacular or in English?

A. In English.

Q. Then who is to do the translating work?

A. The Bench clerk or the pleader can do that.

Q. Would not that waste a good deal of time?

A. But it takes a long time to record them.

Q. The Munsifs take down only the gist of what the witness says.

A. The presiding Judge may dictate.

Q. That might save a certain amount of labour.

A. Yes. Then as regards the substitution matter, the legal representative of the defendant, who has appeared and who dies during the pendency of the suit, should not be served with a fresh notice. It will be his own duty to come forward to be added as a party. But if the defendant has not appeared the usual notice should be served.

Q. When a man is on the record a fresh notice should not be served on him?

A. Even if he is not on record the fresh notice should not issue. For instance, a defendant has died and his son, who is not on the record, is the legal representative. If the defendant has appeared in the case then we may say that his son should not be served with a fresh notice.

Q. That is, if a father in his life time appears in the suit then his son may be deemed as his substitute?

A. Yes.

Q. His son may be serving in Basrah in a Labour Corps.

A. Generally when they live together they have no notice—sometimes they do and sometimes they do not.

Q. Supposing a man dies and the case goes on *ex parte*. You have to consider the question whether his legal representative would be bound to the decree?

A. That is the case under the existing law as well. A man might be living in Basrah and the plaintiff might have the notice suppressed.

Q. Suppression of notices is another question. Apart from that do you think that the plaintiff need not give any notice at all? The difficulty is to define the class of cases in which it would be fair to do that.

A. If it is left open to the representative to come later and to re-open the case probably that objection might be met.

Q. Have you any suggestion to make as regards process-serving?

A. The existing system, of course, is unsatisfactory, but it is difficult to find out a solution.

Mr. Justice Stuart.—*Q*. What is their pay?

A. From Rs. 9 to Rs. 15.

Q. How does it rise?

A. There is a certain percentage getting Rs. 9 and certain others getting Rs. 11, Rs. 13 and Rs. 15.

Chairman.—*Q*. Do you follow the Bengal system requiring an identifier to be given to the process-serving peon?

A. Yes.

Q. Supposing a process is sent by the Allahabad High Court to the Patna High Court or the District Court. Although the nazarat knows the defendant they make no effort in the absence of an identifier to find out the person to be served?

A. If the person is known then, of course, effort is made to serve him without an identifier.

Q. Do they do that or do they neglect such processes?

A. When the process comes to the presiding officer he asks the nazarat to make an effort to serve it.

Q. What I want to know is that when a process comes in the nazarat does it remain there for a month without anything being done and when the District Judge sees it he says "You go again?"

A. There is a time limit fixed for the service of notices. When it goes to the nazir he gives it to the peon to be served within six or seven days. When it comes back the Judge looks into it and if it is not served then he at once asks the nazir to make a further effort.

Q. As a general rule when an identifier is not supplied, the peon would not even go out to the village.

A. In this province when a process is filed, they write on the top of the original process, the name of the village where the identifier is to be found and the person to whom he has to apply to find out the identifier on the spot. If there is no endorsement to that effect, the peon, before he goes out to the mofussil, goes to the pleader of the party and enquires where he has to meet the identifier.

Q. When he goes to a village, does he not ask who is so and so?

A. Sometimes he does.

Q. After all I think the number of people in a village who will be willing to accept processes meant for somebody else is not very great.

A. No. There are very often cases in which a wrong man accepts service and appears and just at the time of writing judgment says that he is not the man.

Q. Then why did he sign the summons?

A. Because the summons came to him.

Q. There is the name on the summons.

A. The name is the same.

Q. The father's name would have been given in the summons and that may be different.

A. The father's name is not given in the summons here.

Mr. Mahommad Hussain.—In the copies of the plaints the father's name is given.

A. They then come and say that copy of the plaint is not served.

Chairman.—*Q*. What is the impression you had as a judicial officer as regards the ministerial staff of your Court? Have you any complaint as regards corruptibility?

A. They are, presumably dishonest.

Q. Why? Do you mean because of their pay?

A. The question of pay is nothing. The habit of obtaining tips is universal. Even if you give them Rs. 100 as pay, they won't do anything unless they get small tips.

Q. What is the remedy?

A. The remedy is to give direct appointments to men who have not been tainted with civil court life. Now he begins from a probationer and as he gets on rising he cannot give up his old habit.

Q. One great thing is not to let the ministerial officers give dates in adjourning cases to a particular date.

A. We publish daily cause lists at the end of the day.

Q. When a man brings in an execution petition it has to be sent to the office for enquiry and notice.

A. No enquiry is necessary because all that a party has to do after he files an execution application is exhibited in a register kept outside for public information.

Q. What I was going to say is that some judicial officers, apparently when it is a question of giving a date, leave it to the Bench clerks to fix the date. I suppose one method of preventing corruption is that a Judicial officer should always give the date himself.

A. In this province they always give the dates themselves in cases which are ripe for hearing. In the early stages when nobody would take any notice and when there is no chance of the case being taken up it would not be possible for them to give dates.

Q. Let us take the case of a Munsif or a Sub-Judge with a heavy file. A case comes into the Court and the return day is put on the summons. The defendant applies for further time to file written statement. He gets it. He applies again and he gets it.

A. The written statement is filed on the same day.

Q. Always?

A. Yes.

Q. Then, there is the question of hearing. Everybody knows it cannot be heard for 6 or 10 months. So, in the meantime intermediate dates are given by the Bench clerk.

A. If the case becomes ripe for hearing, the judicial officers give the dates themselves. Suppose there has been no service of summons and a fresh summons has to go and the officer asks the clerk to fix a date within 3 months hence. It is these things that are left to the Bench clerk.

Q. That is where the Bench clerk will do nothing unless he gets a small tip.

A. He can't give a date less than 3 months.

Q. Does he get a tip for giving 3 months?

A. I don't know that. Probably he does.

Q. You told us that there are certain cases where the ministerial officers give dates which are not likely to be effective. Will you please explain it?

A. A date is fixed for the appearance of the defendant. The defendant appears on that day and applies for time. The judicial officer has also given general instructions that in title suits you give 15 days' time for written statement, and in small causes 7 days. That is done automatically. Then on the second occasion when the same defendant appears and asks for further time to file the written statement, the judicial officer says "you ought to reduce the time by 3 days if it is a money suit, by 1 day if it is a small cause suit and so on." It is these things that are left to the Bench clerk.

Q. Do you often find that issues are put in such a way that it is possible for the pleader to change his case?

A. That has never been the case at Dhanbad.

Q. You have never found that a couple of issues insisted on in the Lower Courts are given up and that case is tried to be argued on issues that were never mentioned in the course of argument before?

A. The Judge gives in his judgment that such and such were the issues and then he adds that there is no substance in such and such issues and that he has decided the case on such and such issues.

Q. Then supposing a question of relevancy arises and the case is not opened. How do you decide the question of relevancy? I suppose it is not decided then and there and the Judge says "All right, I will put it down and I will decide it at the time of judgment." By that time he forgets.

A. The question of relevancy, in my experience, is always decided then and there.

Q. You think that in Bihar the Judge decides the question of relevancy then and there?

A. Yes.

Q. *Then about discovery 'I see you say that each party is anxious to conceal his hand and to keep the trump card for use at the last moment* and to take his opponent by surprise. Do you not think that that is a very good reason for insisting on a case being properly opened?

A. Certainly.

Q. When you settle issues do you do anything about the documents?

A. Those documents which are relied on in the plaint are filed with the plaint but other documents are not filed until after the issues are settled.

Q. When the written statement is filed do you ask for documents?

A. We do not read the written statement.

Q. When do you read the written statement?

A. When the case is taken up after the issues are settled.

Q. You do not read the written statement at the time of settlement of issues?

A. No. Issues are framed by the pleaders of the parties and we do not interfere unless there is a dispute about any particular issue.

Q. When the case comes on for hearing then you know for the first time that the written statement refers to such and such documents?

A. Yes.

Q. And documents are not filed with the written statement?

A. An order is generally passed for filing of documents within 10 or 15 days after the written statement is filed.

Mr. Justice Stuart.—*Q*. How do you know as to whether they are in accordance with the law or whether they have offended the law?

A. We have no time to read the written statement.

Q. The Code lays down certain rules as to how pleadings are to be drafted. In every province I find that law is consistently broken on that point and unless this province is an exception, it is exceedingly likely that the pleadings offend the rules which are laid down by law.

A. We do not read them.

Q. They are prolix, argumentative and very frequently deliberately dishonest, particularly the written statements, but nothing is done to prevent that?

A. No, nothing is done.

Q. There is no form issued in this province on which the Judge records the statement of parties as regards documents?

A. No.

Q. Law of discovery is not really known in the mofussil and people do not understand the principle?

A. No. Since receipt of this questionnaire some of the pleaders have attempted to use that but the other side has always tried to avoid that.

Q. What did the Court do?

A. Sometimes interrogatories were not proper and sometimes affidavits were not in accordance with the law and the Court had to grant further time.

Q. Then a beginning has been made at Dhanbad?

A. Yes.

Q. In your experience have you had cases hung up in revision against interlocutory matters?

A. Yes, particularly in execution cases.

Q. In execution cases there is usually an appeal. I am not talking about appeals but I am talking about revision under section 115. As regards that can you tell me if you had rules afterwards discharged?

A. I cannot lay my finger upon a particular case but generally it happens.

Q. Would you like to have a rule, as in Allahabad, to the effect that applications under section 115 should not lie against interlocutory orders and that they should be made, if at all, at the end of the decision of the matter?

A. I have agreed with that in my reply to the questionnaire.

Q. As regards execution have you any suggestion to make?

A. Generally, when an execution petition is put in the party puts in a false defence of payment that hangs up the case.

Q. That is a common thing—payment within three months?

A. Yes.

Q. Would you be in favour of limiting payments through money orders.

A. Yes, subject, of course, to special exceptions—for instance, an illiterate man paying to the landlord. In that case the Court should have discretion.

Q. We have got a very hard and fast rule now and we have got to consider whether we would be justified in making a hard rule still more hard?

A. In some cases it ought to be made hard but in exceptional cases that rule might be relaxed.

Mr. Mahammad Hussain.—*Q.* Do you agree to payments being made through Sub-Registrars?

A. No. That would mean fresh payment of some money to the Sub-Registrar. There is another thing which hangs up execution work. Notice under Order 21, Rule 66. The party comes and objects to the valuation and tries to hang up execution for a time. If he fails here, he goes up in revision to the High Court.

Chairman.—*Q.* What does the High Court do?

A. Sometimes there is a rule.

Q. What for?

A. Whether the procedure has been correctly followed for settlement of proclamation.

Q. What is the question of procedure that is raised in such a case?

A. Whether evidence has been properly taken and whether further time should not have been given to the judgment-debtor to adduce evidence.

Q. Do you mean to say that your High Court interferes in revision upon a question of discretion as to whether somebody should have been given further time?

A. Yes; or whether further evidence should have been taken in the case.

Babu BHUBANESHWAR PRASHAD PANDE, Assistant Registrar, Patna High Court.

Written Statement.

1. A. *(ii) District and Subordinate Courts.*

Original suits, within nine months.

Regular appeals, three months.

Miscellaneous appeals, two months.
Small Causes, two months.
(*iii*)
Title suits, within six months.
Rent and money, within three months.
Small Causes, six weeks.
B. Claim proceedings—District and Subordinate Courts, six weeks.
Munsif Court, one month.

2. In my opinion the period actually taken in the disposal of original suits and appeals, and miscellaneous proceedings exceeds the reasonable limit in many cases. The following seem to be the main causes of delays:—

(*a*) The principal cause of delay in the disposal of civil proceedings in the province is that the judiciary is undermanned from the lowest to the highest. The average number of disposals in each grade of courts approaches well nigh the number of institutions every year. But accumulated arrears coming down from previous years continue to encumber the files of each court with the inevitable effect of delays in each grade of court through each of which a case passes from one stage after another. It appears that the file of original suits in the Courts of Subordinate Judges and Munsifs starts the year with arrears sufficient to occupy the Courts' time for at least six months' while the lower appellate court file has always arrears to take up at least nine months of the succeeding year. The High Court files start the year with accumulated arrears of work of about two and a half year's in first appeals and of more than a year's work in second appeals. The average figures of institutions and disposals during the period 1920-22 will illustrate the position:—

	Average institutions.	Average Disposals.	Average pending.
Munsif's Court	1,50,500	1,55,460	78,275
Superior Courts—			
Suits	10,241	10,952	4,361
Appeals	8,553	8,532	6,055
High Court—			
First Appeal	260	254	698
Second Appeal	1,607	1,380	2,014

(*b*) In the struggle with fastly accumulating arrears in the courts of subordinate Judges and Munsifs adequate attention is not bestowed in many cases on the preliminary spadework which in the end would shorten the proceedings and clearly mark out the issues between the parties. In the early stage of a case adjournments are allowed without a careful scrutiny of the grounds because the Court has no time to take up the case.

(*c*) Dilatoriness in the preparation of original cases in the courts of Subordinate Judges and Munsifs is another cause of delay. In many cases the actual preparation of the case is not started until the approach of the time of their coming up for hearing. Prayers for issue of commission for local investigations, amendments of pleadings, and steps for the collection of evidence are frequently made at a very late stage in the case. The result is that disposal of such cases is delayed beyond the time when the Court could take them up. Attempts of some judges in the subordinate courts to enforce diligent prosecution of cases have often been foiled either in revision or appeal by superior Courts.

(*d*) Plaints and memoranda of appeals are frequently filed with deficit court-fee, particularly in rent suits on the annual *tamadi* day, and some time elapses before the deficit is made good. Then again some time is taken up in securing the filing of processes and process-fee.

(*e*) Proceedings relative to the appointment of guardian *ad litem* of minor defendants take up a good deal of time in many cases.

(*f*) The system of service of processes is in some measure responsible for delays in the disposal of civil cases and certainly for most of the abuses too.

(*g*) In this province a large number of persons are parties to a suit. The result is that apart from the initial difficulty of effecting service on a large number of persons brought on the records, mortality during the pendency of the suit entail considerable delay in the substitution of legal representatives.

(*h*) Proceedings before commissioners are not unoften unduly protracted.

(*i*) A vast bulk of the litigant public coming as they do from rural areas have to depend upon a class of people, call them touts or pleaders' clerks as you please, in the matter of engagement of legal practitioners and for *pairvi* of their cases. The interests of this class of people are best served, especially in original courts, in protracting the litigation as long as possible.

(*j*) Maintenance of low salaried ministerial staff especially at the bottom with rather heavy burden of work.

3. The obvious remedy is to make a substantial addition to the existing cadre of judicial officers. It is well recognized that as a general rule the Munsifs and Subordinate Judges as well as the District Judges work at a high pressure and that more work cannot be extracted from the present staff. The speed of justice can however be accelerated to some extent by simplification of procedure, by securing due observance of the existing rules of procedure which tend to the simplification of the issues and shortening of time at the actual hearing of a case, and by providing for trial of cases by summary procedure, whenever possible. I would suggest the following:—

(*a*) With a view to enforce payment of the full amount of court-fee leviable on the face of the plaint or memorandum of appeal, I would delete the portion " and the plaintiff . . . . . . to do so " in clause (*c*) of Rule 11 Order 7 of the Code of Civil Procedure. It would be a salutary rule to enforce payment of process-fee and filing of processes along with plaints, petitions and memoranda of appeal.

(*b*) In this province the proposed guardian of the minor defendant hardly, if ever, undertakes the trouble and expense of coming to the court to express his consent to act. The result is that in a large number of cases junior pleaders or officers of the Court are appointed to act as such. I would presume consent of the proposed guardian to act and appoint him as such unless objection is received either on behalf of the minor or of the guardian within a fortnight of the service of notice. In the event of objection the court might proceed to appoint a pleader or an officer of the Court to act as guardian *ad litem* of the minor defendant.

(*c*) In this province pleaders possessing knowledge of surveying are ordinarily appointed commissioners to make local investigation or to make partition. These commissions considered from all points of views, are fairly done. It is true that the time taken up in the execution of these commissions far exceeds the reasonable period for such work. The reason seems to be paucity of qualified pleaders to take up the work. With the increasing supply of qualified pleaders for such work expedition may fairly be demanded in the execution of these commissions. The faults, however, are not entirely with the commissioners. If a commission is issued at a fairly early stage of a case and time is not wasted in the deposit of requisite fee and production of documents required for the enquiry, and if the courts are vigilant in enforcing execution of their commission, then I suppose there will be little occasion for complaint of dilatoriness of commissioners.

The results of examination of witnesses on commission are very unsatisfactory. One has to turn over the pages of any brief containing depositions of witnesses examined on commission to be struck at the horrible waste of time and money involved in the proceedings. Introduction of vast mass or irrelevant matters leads to the waste of the Court's time. I do not expect any improvement by the investment of powers upon commissioners to check irrelevant matters. The Patna High Court has issued two general letters condemning the evil and asking judicial officers to exercise effective control over the commissioners. I am however not very hopeful of any tangible result out of them. Matters might improve a good deal if provisions were made for the appointment of Munsifs, whenever expedient, to act as Commissioners with powers to check irrelevant examination and cross-examination in cases. This however is not possible in the existing strength of the cadre. I would suggest an addition to the cadre for the purpose. The cost involved would be met out of the commission-fee with the additional advantage of economy of court's time and relief to the litigant public.

The limit of two hundred miles in clause (*b*) in Rule 19, Order 16 of the Code of Civil Procedure may be extended to 500 miles in these days of improved facilities of communication. Witnesses exempted from personal attendance in court under section 132 and section 133, Civil Procedure Code, should always be examined by the Judge whenever such a witness be found prepared to be examined at the Court station.

(*d*) A better system of service of processes would relieve the Civil Courts of a good deal of miscellaneous work which occupies not an inconsiderable amount of their time at present. My views on the subject will be found in the printed copy of the note submitted to the High Court in another connection in the month of July 1923.

(*e*) It appears that about 11 per cent. of first appeals, 18 per cent. of the second appeals on the figures of those decided on contest in the High Court and 6 per cent. in the lower court are sent back on remand under Order 41, Rule 23. Remand of a case under Rule 23 prolongs the litigation to the great harassment of the parties concerned. It should be possible to reduce considerably the number of remand under Rule 23 by more frequent exercise of the powers under section 103 and Order 41, Rules 24 and 25 of the Code of Civil Procedure.

(*f*) Greater attention should be paid to the rules under Orders 7, 8, 10 and 14 of the Code of Civil Procedure in the Courts of Munsifs and Subordinate Judges. Much could be done in this direction by frequent inspection of records of the subordinate courts and by personal advice and instruction by District Judges. The District Judges, however, have hardly any time to spare from their case work to look to these things.

(*g*) The best cure for dilatoriness of the litigants in the preparation of the case seems to lie in the better arrangement of files to enable parties to know with some degree of certainty as to when their cases will come up for hearing, greater control of the presiding Judges over the proceeding of a case from start to finish and in the firmness of the Judges which however depends in some measure on the support of the superior courts. It has often been noticed that when an additional officer is posted to any station there is very little difficulty in making cases ready for hearing. As soon as it is known that the Court will take up the case for hearing parties generally manage to get ready in time. One would have little occasion to hear of dilatoriness of litigants in this province if the courts were prepared to dispose of cases promptly.

(*h*) Co-operation among the different grades of courts for avoiding delay may be helpful in speeding up justice. Cases in which the proceedings have been stayed by orders of the superior courts, or cases in which there are no orders of stay of proceedings but the records have been called away in appeal or revision against interlocutory orders should receive the first attention of the court which issued the orders and should be disposed of with all possible expedition. I would suggest prescribing a special statement of such cases to be submitted to the District Judges every month and to High Court every quarter. It should be the duty of the District Judge or of the Registrar of the High Court as the case may be to arrange for the expeditious disposal of such cases.

(*i*) Rent suits constitute the bulk of the litigation in Munsifs' Courts in Bihar, and money suits in Orissa and Chota Nagpur. It appears that on an average 72 per cent. of the number of suits that are instituted in the courts in Bihar and of those that are instituted in Orissa and Chota Nagpur Courts about 75 and 77 per cent. respectively are suits for money or movables. Bulk of the rent suits is decided without consent and about 15 per cent. are decided on contest. About 86 per cent. of the rent suits are of value not exceeding Rs. 100 and about 98 per cent. of value not exceeding Rs. 500. About 48 per cent. of the number of appeals that are preferred in this province are from decisions in rent suits. Again about 60 per cent. of rent appeals are of value not exceeding Rs. 100 and about 90 per cent. of value not exceeding Rs. 500. Investment of powers of courts of small causes to Munsifs in Orissa and Chota Nagpur have been found helpful in keeping under control the files in those two divisions where suits are disposed of more quickly than in Bihar. Rent suits in Bihar which are mostly instituted on a particular day in the year is an important problem in this province. The simplest solution that suggests itself to me is to extend the limits in clauses (*a*) and (*b*) to section 153 of the Bengal Tenancy Act to Rs. 250 and Rs. 500 respectively and to invest larger number of Munsifs with those powers. I expect all round speeding of justice by this device. Rent suits as well as other classes of suits in the Munsifs' Courts will be more quickly disposed of and it may be possible to employ Munsifs in relieving congestion in the superior courts by investing higher powers to a larger number of them.

The initial pay of clerks in the district and the courts subordinate thereto is Rs. 30 a month. This is hardly adequate to meet the bare necessities of the class of men who are employed as clerks in Civil Courts. Low salary at the beginning of service is not in a small measure responsible for the introduction of corruption prevailing in the ministerial establishment of Civil Courts. It is difficult to shake of the habit of illicit gain acquired at the beginning of the career however high one's position and whatever his salary may be in later life. Then again the present scale of work presses rather heavily upon clerks in Civil Courts, particularly in Munsifs' Courts in Bihar where large number of rent suits are instituted on a particular day in the year. It appears that formerly 1,500 cases formed the unit of an establishment of three clerks including the Bench clerk. The scale was raised to 2,000 cases with the proviso that an additional muharrir may be allowed when the number of cases exceeds 2,600, *vide* paragraph 95, page 70 of the Report of the Ministerial Service Committee. Experience of average Munsifs in Bihar seems to justify the criticism that the scale has been pitched rather high. The same unit is applicable to Subordinate Judges Courts where in rare instances even half of the prescribed standard is ever reached, while in the Munsifs' Courts the minimum is generally exceeded. The fact is that clerks in most of the Munsifs' Courts in Bihar have got to do more work than what they can cope with during the office hours and that they have to work in the morning and late in evening. This makes for so much corruption prevailing in the ministerial establishments. It is also responsible in some measure for the employment of unauthorized assistants which under the stress of supervision seems to be diminishing. The work done by such irresponsible hands adds not a little to the burden of miscellaneous work of judicial officers. I think that all offices at Sadar can be amalgamated under the direct control of one officer so that by fair distribution of work it may be possible to manage with the existing staff. Improvement in the pay and revision of scale of work are very much needed to secure anything like honesty and efficiency in the ministerial establishment.

4. A new system of recruitment of judicial officers on the line of the recommendation of the Islington Commission has just been introduced in the province. I would however insist upon two years minimum practice at the bar, and if necessary, raise the age limit to 28 years. Endeavour should be made to give effect to the provision made in paragraph 14 of the Home Department Resolution No. 2559, dated the 1st November 1920 regarding the special training of Indian Civil Service officers allocated to the judicial branch. I would suggest promotions from the Provincial Service to the rank of District Judges by strict selection at a comparatively early stage.

5. In this province provisions have just been made for the training of Munsifs recruited under the new system and the system had better have a fair trial.

6. I do not think so. In this province judicial officers are not ordinarily transferred before completion of three years at any one station. The system works well from the point of view of officers as well as that of the public.

7. No general standard of outturn of work can be laid down as the nature of work varies at different stations. In this province the standard of outturn of work has been kept fairly high by careful scrutiny and comment on the periodical statements of work every month by the District Judges and by the High Court at the close of every quarter.

8. I do not think so. In this province the Civil Courts seem to be fairly distributed.

9, 10 and 11. The jurisdiction of Munsifs in this province has recently been enhanced to try suits under the ordinary procedure up to Rs. 4,000 in value by the amendment of section 19 (*2*) of the Bengal, Agra and Assam Civil Court Act (XII of 1887) and a larger number of Munsifs exercise power above Rs. 1,000 than at the time of the constitution of the Patna High Court. Munsifs are now vested with powers to try suits up to Rs. 250 in value under the Small Cause Court procedure. There is however not much scope for extensive investment of higher powers to Munsifs. The Patna High Court has been investing higher powers to suitable officers whenever the state of the file admits of its being done. Much could be gained by enhancing the appellate jurisdiction of District Judges from Rs. 5,000 to Rs. 7,000. But I would not advocate the change until the Local Government are able to arrange for the special training of Indian Civil Service Officers in judicial work as laid down in paragraph 14 of the Home Department Resolution referred to above.

12 and 13. I would not relieve the District Judges of the responsibility of the administration of Civil Justice within his judgeship. I am, however, strongly in favour of providing him and other judicial officers, whenever practicable, with suitable assistance in administrative and *quasi*-judicial work. I would suggest the creation of a post similar to that of District Registrars in provincial towns in England at the headquarters of District Judges with limited powers. I would appoint Munsifs to hold the post for a certain period, say three years. Provided with such assistance the District Judges will be able to devote much longer time to judicial work and exercise better supervision over the administration of civil justice within his judgeship. The District Registrar may also be able to relieve other judicial officers at the headquarter stations of office and *quasi*-judicial work and thus enable them to devote their full time to judicial work with the certain result of material increase in the outturn of work which means quicker disposal of cases.

Selected Subordinate Judges and Munsifs can very well be vested with power to try Probate Cases, Land Acquisition references and also proceedings under the Insolvency Act. In this province five Munsifs are already vested with powers under section 26 of the Succession Certificate Act. I do not see any ground to apprehend any objection from the public in the matter.

14. I should like to see small beginnings made for the disposal of small cases by village panchayats on the line of the enactments in the Village Administration Act.

15. Suits for contribution in respect of payment made on account of rent or land revenue or cesses might suitably be tried under Small Cause Court procedure and Article 41, Schedule II of the Provincial Small Cause Court Act amended accordingly. Article 14 of schedule may also be excluded. I am opposed to the suggestion regarding trial of suits for the enforcement of simple mortgage under Small Cause Court procedure. The law of mortgage is rather complicated and many cases involve intricate questions of law and fact.

16. The class of suits set out in section 128 *(2)* *(f)* *(i)* are tried under the Small Cause Court procedure up to a certain value and it does not seem advisable to extend the limit.

17. I am not in favour of disposal of civil suits by a tribunal other than that paid for the work.

18. The existing right of appeals should not be curtailed except in rent suits as I have suggested above.

19. *(a)* Letters Patent appeals should not be allowed against a judgment affirming the concurrent findings of the lower Courts.

(b) I cannot agree to the suggestion for in the Patna High Court a Single Judge hears appeals and revisions of value not exceeding Rs. 1,000.

20. I do not feel quite competent to answer this question. Appeals from the decree of lower appellate courts are filed in about 18 per cent. cases. It appears that about 33 per cent. of the appeals preferred are summarily dismissed and of those that are decided after contest, the lower appellate Court decisions are confirmed in about 64 per cent. and reversed, modified, or remanded in about 36 per cent. Something may be done to check filing of frivolous appeals by stringent provisions regarding vakils' certificate as to the grounds of appeal with some penal clauses, if possible. I would not agree to the restriction of the right of second appeals on the grounds of pecuniary value of a case when such appeal is permitted on the grounds of law or substantial defect in procedure leading to error in decision. Besides the court has ample powers of dismissing an appeal summarily when it does not involve such questions.

21. I am not in favour of imposing the condition precedent of deposit of decretal amount in cash before filing an appeal. Mere filing of an appeal does not lead to the stay of execution of a decree. Besides this would affect appeals in suits for money claim only and that also by defendant appellants

only. It cannot be said that plaintiff-appellants are in any way more discriminating in the exercise of their rights of appeal. The suggestion would tantamount to a denial of the right of appeal in many cases.

23. (1) I would agree to the suggestion with this reservation that the court may dispense with the deposit of decretal amount in appropriate cases.

(2) I would not agree to restrict the High Court's power of revision against such interlocutory orders as can be attacked on appeal against the decree on suit. The provision of such revision by the High Court exercises wholesome influence upon the subordinate Courts. Besides sometimes interlocutory orders vitally affect the merit of a case and it is better to allow the matter to be settled at the preliminary stage than to reserve it for the final decision, keeping open a chance for remand to the prolongation of the litigation and harassment of the parties. All that is required is that unless the orders complained against affect the suit vitally the proceedings should not be stayed and the petitioner should be required to file certified copies of such portion of the record as may be necessary for the determination of the question raised. The Patna High Court has already issued instructions to the Subordinate Courts prohibiting sending up of the whole record to the High Court unless specially asked for. (General Letter No. 9 of 1923.)

25, 28, 29 and 30. My views on the subject will be found in the printed copy of the note.

26 and 27. Plaints, written statement, memorandum of appeal and cross-objection are generally not precise and to the point in this province. The provision of the Code of Civil Procedure in Orders VII and VIII are not very carefully followed. The best way to ensure observance of the rules seems to provide for plaints, written statements, petitions, memorandum of appeal and cross-objection being filed in English. Plaints of rent suits and petitions for steps in the preparation of a case may, however, be filed in the language of the Court. There is already a rule in the Patna High Court General Rules and Circular Orders, requiring parties to file plaints, petitions and affidavits in English, wherever practicable, but owing to the provision of section 137 of the Code of Civil Procedure it has not been possible to enforce it.

31. I have already suggested above that the best way to ensure better framing of issues is more frequent inspection of records of the Subordinate Courts and personal advice and instructions of District Judges in the matter.

32. Provisions of Orders X, XI, and XII of the Code of Civil Procedure are generally neglected in this province. The neglect of Order X is due to the fact that many cases in the preliminary stage do not receive adequate attention of Munsifs and Subordinate Judges.

The neglect of Orders XI and XII may be attributed to the lack of systematic preparation of cases in the mofussil. It is not unoften the case that legal practitioners are engaged to conduct the case on the day of actual hearing of the case. The preparation of the case ordinarily remains in the hands of a karpardaz who rarely take proper legal advice. I think that the Courts may show the way by giving necessary directions to the parties on the date of settlement of issues. The Courts should be empowered to award penal cost irrespective of the result of the suit whenever any party wantonly refuses to admit any document with a view to protract the proceedings or to harass the opposite party.

33. I would not agree to the suggestion as to the examination of parties as a part of the trial at the beginning of it. My idea is that in civil litigation the parties should be left a free hand in the matter of adducing evidence and they should not be compelled to depose as witnesses. I do not think such examination of parties would in any way tend to minimise the calling in of irrelevant evidence and of witnesses unnecessarily. I rather think that larger number of witnesses more carefully tutored might be brought in to support or contradict the statements made by the parties themselves at the previous date.

34. Clause 2 of Rule 16, Order XVI is not generally observed, the reason being that parties generally manage to procure the attendance of their witnesses on the date of the actual hearing of the suit. Besides there appears to be no provision in the Code of Civil Procedure as to the forfeiture of security for non-attendance of a witness on the date fixed. I should think that the Civil Court may be vested with power similar to section 514 of the Criminal Procedure Code so that the rule, when necessary, can be effectively enforced. Criminal courts have much better control over their witnesses because they can put into operation immediately the powers under section 174, Indian Penal Code for which the Civil Courts have to move through the circuitous course of the provisions of section 476, Criminal Procedure Code, which itself means delay and the result is that the powers are never utilized in the Civil Courts. I would suggest that Civil Courts may be authorized to exercise the powers under section 174, Indian Penal Code.

35. It is true that much unnecessary and avoidable oral evidence is let into the courts of this province. I would not however venture to control the citing of the number of witnesses in a civil case for it seems to be less harmful to allow some irrelevant matters let into the record than restrict the evidence, the nature and worth of which the Judge connot know.

36. I agree with the suggestion that in *ex parte* proceedings affidavits should be the preliminary mode of proof and no oral evidence should be allowed except with the special leave of the court. I do not consider it necessary to provide the condition " on prepayment of special costs." I would not however adopt the suggestion in respect of contested proceedings even when no appeal is allowed.

37. The suggestion to fix a time limit for the examination and cross-examination of witnesses does not commend itself to me. An intelligent grip of the case on the part of the Judge and a careful control of the examination and cross examination of witnesses according to the rules laid down in the Evidence Act should be sufficient to keep out much of the irrelevant matters from the record.

39. The principle of representative suits can be made of wider application with some advantage in the case of Mitakshara family and co-owners. It seems to me that it will be sufficient to add an explanation of the expression " numerous persons " in Rule 8 of Order 1 so as to include within the scope of the rule Mitakshara family, other co-owners and persons similarly situated.

40. The legal representatives of the plaintiffs, appellants and petitioners are bound to come in within the period prescribed by the law. Legal representatives of defendants, judgment debtors or opposite party should not be bound by the decree or order unless substituted, otherwise there is danger of real hardship and injustice in many cases. Besides it would open out a fresh avenue of litigation.

41. I have already stated in my answer to question 2 that proceedings relating to the appointment of guardian *ad-litem* of minor defendants lead to some delay in the disposal of cases and have also suggested remedy therefor. I do not consider it advantageous to require the plaintiff to name "all the possible guardians " in his petition and to issue notice to all of them simultaneously. The expression " all possible guardian " seems to be very vague and difficulties might be felt in actual working of it. It is obvious that much time will be taken up in effecting service on a large number of persons named by the plaintiff as possible guardians. I think that if the guardian proposed by the plaintiff cannot be appointed owing to objections raised either by the minor or the guardian then the Court should proceed to appoint a pleader or an officer of the Court to act as guardian without waiting for any further proposal of guardian from the plaintiff.

42. The practice of granting *ex parte* injunctions and orders is not taken undue advantage of in this province. But such applications on frivolous grounds are not uncommon.

43. The size of a judgment depends upon the temperament of individual Judges. I cannot think of any method of curtailing the length of the

judgment nor do I think that the size of the judgment causes any appreciable delay in the decision of suits as judgments are mostly written by judicial officers at their residences.

44. Points of law going to the root of the claim or defence are not usually disposed of before taking evidence in this province, unless pressed by one party or the other. Original Courts generally prefer to dispose of a case after recording evidence on all the questions raised in order to avoid chances of remand unless of course there is any obvious defect of law and procedure which is fatal to the whole case.

45. Original dates are not fixed by the presiding officers in this province. The usual practice is that the original date is fixed by the Sheristadar and the subsequent dates are fixed by the Bench clerk until the case attains a certain age when the presiding officer takes special care as to the dates to be fixed for the case. The Bench clerk is supposed to fix the dates under the general instructions of the presiding Judge. I do not think this practice leads to delay in the disposal of many cases. Fixation of dates by the Judge himself will certainly be much better from all points of view. It will, however, be impossible to enforce such a rule in many courts especially in the Munsifs Courts in Bihar without appreciable reduction in the outturn of work of the officer.

46. Pleaders are consulted in fixing the time required for the examination of witnesses and argument in big cases in Subordinate Judges' Courts. They are not generally consulted in Munsifs' Courts. I doubt if it will be always profitable to consult pleaders in the matter; besides it is not always possible to get hold of pleaders of both parties for the purpose at the same time.

47. I have already referred to this question of delay and remedy therefor in my answer to question 2.

48. I have already said above that cases are generally adjourned without careful scrutiny of the ground urged because the Court has no time to take up the case. It will not improve matters to require applications for adjournment to be supported by an affidavit; affidavits generally degenerate into a matter of form. Date costs are generally awarded on adjournments. Adjournment costs are not very effective in checking applications for adjournment and as I have said above when the parties know that their case will be taken up all objections are waived and they manage to get ready in time.

49. Suits are tried from day to day in the mofussil courts in this province as a general rule.

50. The Patna High Court insists upon District Judges inspecting each subordinate court at least every 18 months; the presiding officer of each court is also required to inspect his office every year.

52. Much of the evils in execution proceedings are due to the present system of service of process. Every process is liable to be attacked. Charges of fraud in publishing and conducting the sale and application to set aside the sale on that ground under Order 21, Rule 90, are extremely frequent. I am afraid many frauds are perpetrated in collusion with the process-servers but charges of this nature are also made without justification. The only remedy for the evils is substitution of a more reliable system of service of processes.

In every execution proceedings for sale of immovable property several processes have to be served and the time taken up in the service of one process after another may be reduced by curtailing the number of processes or by providing for simultaneous service of some of the processes. Some time is wasted in securing the filing of process fees and processes for the issue of every process one after the other. The decree holder's pleader should be able to file the requisite fee and process whenever required and prayer for time on the ground of sending information to the clients should not ordinarily be entertained. Mention of valuation in the sale proclamation under Order 21, Rule 66 (2) (e) of the property to be sold is an easy handle to the judgment debtor to delay the proceedings. Sales are very frequently sought to be set aside on this ground. There is hardly any practical advantage in mentioning the value of the property in the sale proclamation. In this province intending bidders hardly, if ever, depend upon the description in the sale proclamation of the property to be sold and they gather informations as to the nature of the property from other sources. It is also a fact that correct value of the property is rarely, if ever, stated in the sale proclamation. In any case the value of the property need not be regarded as a material fact for the information of the purchaser in the case of sale of revenue paying estates and agricultural holdings in this province. In the case of revenue paying estates the amounts of annual income taken from the khewat and of annual revenues and cesses should be sufficient materials for the information of purchasers under clause (*c*) of the rule. In the case of agricultural holding the nature of tenancy and the kind and amount of rent should be regarded sufficient.

In sales under Chapter XIV of the Bengal Tenancy Act, the provision of the service of the processes of attachment should be done away with for under section 65 of the Act rent is always the first charge on the holding. The sale proclamation and notices under section 158*B* of the Act whenever required should issue simultaneously for service. The time -limit of sale after the service of sale proclamation may be reduced from 30 days and 15 days as provided in Order 21, Rule 68 to 7 days in cases where fresh sale proclamation is required under Rule 69 (*2*) of Order 21 of the Code of Civil Procedure.

53. I am in favour of the extension of the principle of section 21 of the Code of Civil Procedure to execution proceedings.

54. I agree with the suggestion to invest the Court to which a decree is transferred for execution with powers which the Court which passed the decree has as to the adding of legal representative, recognition of assignments of decrees, transfer for execution and similar matters. I would only require that when a decree is transferred by such a Court to another Court an intimation to that effect should be sent to the Court which passed the decree.

55. I am not in favour of modifying section 47 as suggested, for that would introduce much unnecessary complications in the execution proceedings. The provisions of Order XXI, Rules 95 to 102 of the Code of Civil Procedure meet all necessary requirements and afford sufficient protection to the purchaser.

56. I agree to the curtailment of the period of limitation for execution in money decrees to six years but I would restrict the curtailment of the period to suits of value not exceeding Rs. 500. If it be at all necessary, which in my opinion is not, to retain the provision regarding the periodical execution of decree, then I would adopt the suggestion of reducing the period to one year from the date of the last order. I however think that some amount of litigation would be avoided if this rule of periodical execution of decree and steps in aid of execution were done away with and the decree-holder allowed to put his decree into execution at his discretion within the limit of six or twelve years as the case may be.

58. It does not seem advisable to provide any further restrictions in the matter of recording of payment of decretal dues. The period of three months within which such payment should be recorded does not seem to be a long one. The three months rule, however, does not apply to decree-holders and such of them as are dishonest, take advantage of their position in evading the law of limitation. If a decree-holder fails to certify the payment to the Court within three months he should not be allowed a fresh start of the period of limitation from the date of payment. It is, however, very often the case that after issue of Court's processes the decretal dues either in part or in full are paid outside the Court and the process is returned unserved and neither the decree-holder nor the judgment-debtor ever care to come to the Court to have the payment recorded. The result is that in many such cases execution proceedings entered are dismissed as infructuous whereas it was really not so. This is one of the reasons for the

very high percentage of infructuous proceedings shown in the statements. The rule may be so altered as to allow payment being recorded whenever one or all of the decree-holders or even their agent certify payments on the back of the process and the decree-holders' pleader being informed of it does not show any case to the contrary within the time fixed by the Court.

59. I entirely agree with the suggestion. I would delete the second proviso to Rule 16 of Order 16 altogether.

60. There might be cases of real hardship where execution against the person and property of the judgment-debtor should not be allowed to proceed simultaneously and I am not in favour of depriving the Court of powers in this matter. I would substitute the expression " in its discretion " in the rule by " for reasons to be recorded in writing ".

61. (*a*) Notice under clause 1 (*1*) of Rule 22 of Order 21 does not seem to be at all necessary; but notice against the legal representative of a party to the decree seems necessary.

(*b*) I am not in favour of deleting Rule 22 altogether but would amend it as suggested above.

62. In my opinion Order 21, Rule 26 is sufficiently wide and should enable the Courts to pass suitable orders in a case of money decree.

63. The Civil Procedure Code except in the circumstances provided in Order 21, Rule 22, does not provide for the service of notice in execution proceedings for sale of moveable property and in sale of immovable property one notice under Order 21, Rule 66 for drawing up the sale proclamation is served. I think if provision be made for service of notice at the beginning of the proceeding then no other notice to the judgment debtor would be necessary.

64. A copy of the sale proclamation should be served on the judgment-debtor if no notice of the execution proceeding is served upon him, otherwise not. I do not agree to the suggestion of service of notice of execution petition upon the pleader or vakil who conducted the suit leading to the decree. In this province a vakil's connection with the suit practically ceases as soon as the suit is disposed of, and I do not see why the legal fiction of the execution proceeding being a continuation of the suit should be utilized in saddling the vakil with the responsibility of hunting out his clients when decrees are put into execution after several years. I see considerable practical difficulty in the course.

66. I am not in favour of materially altering the procedure relating to mortgage suits.

- (*a*) There is no objection in requiring the plaintiff to file an incumbrance certificate in respect of the mortgaged property as available in the Registration Office; but I would restrict it to the period subsequent to the date of the mortgage in suit.
- (*b*) I would require only persons having the right of redemption to be impleaded as defendants to the suit. A mortgage suit should not be dismissed for the mere non-joinder of parties unless the defect is fatal to the suit and no other relief can be granted.
- (*c*) I am strongly opposed to the proposal which will complicate mortgage suits by introducing issues which can more suitably be dealt with in a separate suit.
- (*d*) The proposal that all sales in execution of mortgage decrees shall be free from all incumbrances will complicate matters and will lead to great hardship and injustice in many cases.
- (*e*) In this province the prescribed period of six months time is rarely exceeded in preliminary decrees. I do not see the necessity of granting any such time. In simple mortgage suits for sale there appears no necessity of a separate final decree. I think it will not be advisable to insist upon passing personal decree

in the principal suit for in a very small percentage of cases necessity for such a decree at all arises. If the rule of passing personal decree in the primary decree be introduced then the questions relating to personal decree will have to be gone into in every case whereas its advantage will be availed of in very few instances for generally a mortgaged property is found sufficient for the amount of debt.

67. I am not prepared to say that the appellate Courts pass orders for stay of execution proceedings without sufficient cause in many cases. I would not penalise people for asking orders of stay on insufficient grounds.

68. I think that Order 21, Rule 29 which is sufficiently wide would cover the case contemplated by the question. I would not curtail the power of the Court in the matter.

70. In this province execution by arrest of judgment-debtor is not very frequent. It is, however, generally difficult to secure the arrest of the judgment-debtor and this necessarily leads to delay. I am not able to think of any device to prevent absconding of judgment-debtors. Something might however be done by requisitioning the assistance of police in the arrest of absconding judgment-debtors but I am not very hopeful of any tangible result out of it.

71. Too much of formal evidence regarding attestation of documents for their admission as evidence seems to protract unduly the hearing of the case. Something may be done to curtail the formal proof by allowing documents covered by section 35 to be admitted into evidence without formal proof it being provided that where necessary the original document may be called for inspection.

72. It does not seem necessary to retain the provision of calling an attesting witness to prove the mortgage bond. I would not shift the burden of proof as to the validity of the mortgage upon the defendant.

73. Not much time is taken up in obtaining certified copies. I would accept paper books printed in the High Court in original in a previous litigation as secondary evidence but not translations; the accuracy of translations is always open to comment and it is better that the Court has before it the document in the language in which it is written.

76. I would not agree to the proposal that all future partitions of immovable property should be evidenced by a registered instrument; but, of course, when an instrument is written it must be registered.

78 The doctrine of part performance negatives in some measure the provisions of the Transfer of Property Act as to the creation of title in immovable property. It is, however, an equitable doctrine quite suited to the economic and social condition of India and I am not in favour of withholding the application of that doctrine in this country.

79. I do not agree with the suggestion. It is a matter of common knowledge that many decretal dues are paid out of Court and neither the judgment-debtor nor the decree-holder care to come to Court to enter satisfaction of the decree. Similarly money due on registered instrument are always paid in the mofussil and it would be too hard to provide for payment of such debt by a registered instrument.

80. I cannot agree to the suggestion for that would create considerable difficulties in the way of illiterate persons obtaining a loan and in entering into other transactions.

81. I agree to the proposal.

82. I do not agree to the further increase of court-fee. I am afraid that further enhancement of court-fee will press heavily upon *bonâ fide* suitors and will not put down frivolous litigation.

83. No.

84. In a poor country like India champerty should be allowed otherwise rightful owner of properties will not be able to come to Court.

Babu BHUBANESHWAR PRASHAD PANDE, Assistant Registrar, Patna High Court, called and examined on Friday, the 27th June 1924.

Mr. Justice Stuart.—We have to thank you for one of the best notes I have seen and it is very helpful. I do not propose to take you over all the matters which are already in your note.

I observe that you are in favour of passing a very strict rule that all process fees and the copy of the plaint must be filed at the time the plaint is put in and not later.

A. Yes. I want to enforce it.

Q. In your opinion is this quite practicable?

A. Yes.

Q. It has been suggested that the office is not certain as to whether a plaint, when it is presented is a good plaint. I mean it may be barred by limitation. The court-fees may not be sufficient. Do you think that that affords any reason for not filing the process memo. along with the plaint?

A. If the plaint can be rejected the process fee could be returned.

Q. It is quite possible to do what you suggest?

A. Yes.

Mr. Mohammad Hussain.—My own experience is that in practice these process forms are filed along with the plaint.

A. No. Especially in rent suits much time is taken. In big suits in Sub-Courts the process fee is paid along with the plaint and not in the Munsif's Courts.

Q. I was thinking of the cases in the Sub-Judge's Court.

A. Yes. There, things are done more regularly than in the Munsif's Courts.

Mr. Justice Stuart.—Then, there is another thing about court-fees. Suppose a plaintiff has to pay a court-fee of Rs. 100 for a plaint in a Sub-Judge's Court and knowing that the plaint is filed on a ten rupees stamp, does he not usually apply for time and is he not given about 6 months to make up the balance?

A. In this province the time does not extend so long but some time is taken up.

Q. I am not criticising your province but I am speaking of the whole of India. In other parts a plaintiff who knows the amount of court-fees to be paid and is absolutely certain about it will still file the plaint on a court-fee of Rs. 5. Should such a man not be given one short adjournment only for making up the amount and no more?

A. Yes.

Chairman.—The Judge can say "You must bring the balance of the money in 2 days time." He can do that now.

A. Yes, that he can do. But when once time has been given and a petition is put in for further extension of time we have to see whether there is sufficient reason for granting further time.

Mr. Justice Stuart.—*Q.* Do you think there should be a rule laid down by your High Court to the effect that a Court should not usually grant a man longer time than would enable him to get to his home, obtain the money, and bring it back? If a man chooses to come into Court without having the requisite court-fee, he is entitled under the law to one adjournment only.

A. When once we give an adjournment and then when there is a petition for extension of time, we cannot say that only one adjournment would be given.

Q. I suggest it should be made a rule. Of course if the man is taken ill there would be good reason for a future extension. But I cannot see any other for granting an extension of time.

A. Yes, if it is made a rule then it will be good.

Q. Now, the next point is with regard to commissions for local investigations, partitions and the like. Now you state that there are not sufficient qualified pleaders to take up this work in Bihar. Don't you think that it would be a good thing to go back to the old amin system?

A. No.

Q. Why?

A. I cannot rely upon them.

Q. You cannot rely upon them, I take it, for the reason that the amins of the past were low-paid subordinates. You could not rely on the individuals, but was there anything wrong in the system?

A. If you put highly paid officers they could be relied upon.

Q. Yes. That is my suggestion. It is like a good many other systems which have been condemned because they were never given a fair chance. If you put underpaid subordinates' open to corruption to work any system the system will certainly fail.

A. Yes.

Q. The point is this that this system was abandoned and a very much worse system substituted of employing gentlemen who, though suitable in other ways, are in no way under the control of the Court. The difficulty is if you appoint a pleader you cannot say "You shall complete your work on such and such a day." You can say that to an amin.

A. We can say that to pleaders also if we have a sufficient number of qualified men.

Q. In this province you may say it with effect. In most of the provinces, it has never any effect. I have seen commissions of this kind carried on for 12 and 18 months and even two years. The pleader had always an excuse. You won't have that occurring with an amin. You can say to him "You did not do your work you will be fined, suspended or dismissed."

A. Yes. Generally you can deprive him of that job. But some pleaders are really anxious to have the commission work.

Q. I also mean you can pay an amin well. The fees will cover his pay.

A. Yes.

Dr. DeSouza.—*Q*. Is there work enough for a wholetime amin in a Munsif's Court?

A. I don't think so. Now in this province we have got one district where there is still one amin.

Q. What is the survey examination which the pleaders have to pass in this province for getting commissions?

A. Training for 6 months in the Engineering College.

Mr. Justice Stuart.—I may take it that you have no objection to the amin system if the amins are competent and earnest.

A. Competent men, you will get. But in this matter there is the question of honesty.

Q. Surely if you select the man correctly and pay him sufficiently there can be no objection.

A. The difficulty is of selection. Unless you take a highly paid man, one man won't be able to take the district of Gaya; and it may be necessary to employ more than one man.

Q. The next question is the question of commissions for examining witnesses. There are two aspects of looking at it. The one is whether the commissioners take a lot of irrelevant evidence and the other is whether they return the commissions within a reasonable time. As for taking irrelevant evidence, it is not a matter of very much importance; because you can always rule that out later. But the great difficulty is they will not return the commissions in time. Can you see any method of avoiding that under the present system?

A. I have made one suggestion in my statement.

Q. Yes. You say you cannot make any suggestion under the present system. You suggest the work of the commissions should be handed over to the judicial officers in the places where the commission is to be executed. Of course that would mean a considerable increase of their work.

A. Yes, there will be some increase.

Q. But do you think it is well worth trying?

A. Yes. The costs will be met by additional commission fee.

Q. It is not a question of cost but a question of holding up their work.

A. But there will be extra-fees for that purpose.

Q. Then as to the large number of first appeals which are remanded back and in which further time is wasted, you suggest that it might be worth considering that the appellate courts should exercise powers under section 103 to decide these points themselves instead of sending them back. You cannot suggest anything further than that.

A. Not under the existing system.

Q. What are the main causes for delay in hearing the cases?

A. The cases are taken up, the parties are not ready and want further time.

Q. Is there any reason why they should be given time?

A. It is not practicable, or possible to refuse.

Mr. Mohammad Hussain.—*Q.* At the time of fixing the dates have they any idea whether the cases would be disposed of or not?

A. They have no idea. The position is improved a good deal. One should say that now the Munsifs take particular care.

Chairman.—*Q.* What do you think of Subordinate Judges having power to do up to Rs. 500? Will that be objected to?

A. I do not think that it will be.

Q. Can rent suits be decided by the Certificate Procedure up to Rs. 500.

A. Yes. I think so.

Mr. Mohammad Hussain.—There will be objection. As regards Rs. 100 there may not be so much objection.

Mr. Justice Stuart.—The next point which you have taken up is that the system by which ministerial officers are recruited is bad and that it tends to bad work. Then you say that their number is insufficient and that this also leads to bad work because they find it very difficult to cope with their work.

A. Yes, specially in Munsifs' Courts.

Q. Now, can you tell me how many Munsifs have had their powers raised to Rs. 4,000?

A. Seven to Rs. 4,000, three to Rs. 3,000 and 16 to Rs. 2,000.

Q. And how many more are there?

A. There were 73 altogether in this province and the cadre has been raised by 14 and now there are 87.

Q. I now come to another point on which I should like to have your further opinion. I find that of your own initiative you make a very good suggestion. You say "I am strongly in favour of providing the district judge and other judicial officers with suitable assistance in administrative and *quasi*-judicial work and I would suggest the creation of a post similar to that of district registrars in provincial towns in England at the headquarters of the District Judges with limited powers." Would you be in favour of extending that further and in places in which there are large number of Courts collected in one place to appoint registrars to take up the whole of the office work of all those Courts and to decide uncontested cases?

A. Yes if he has got time.

Q. Of course I make a qualification that the thing would have to be practicable. There will have to be enough work for the registrar and if there is too much work for one registrar you will have to appoint two registrars. This is a matter of detail which can be worked out. There are many places in Bengal and I think there are some places in Bihar where there will be ample work.

A. I hardly think that there is any station like that in Bihar.

Q. You have got stations where there are five or six Courts. For example in Muzaffarpur you have got six Courts.

A. That is the district headquarters.

Q. I am referring to any place.

A. I have suggested that for the district headquarters.

Q. I see that we are in complete agreement on the point. It would be in outlying munsifis that there would not be enough work but at the headquarters there would be enough work. You consider that that would make for an enormous amount of improvement?

A. Yes.

Q. And in that way you would get over the difficulty of uncontested work which would never go to munsifs at all. It would be done by the registrar.

A. Of course that can be done.

Chairman.—*Q*. Of course that would involve some initial expenditure in altering your office?

A. It would increase income, there would be saving of time and in the end it would be economic.

Mr. Mohammad Hussain.—*Q*. Can you agree with me that all the appeals and the plaints should be filed before that registrar?

A. Yes. You will have an amalgamated office with different sections.

Q. You want the whole thing to be done by him?

A. Yes, the office would be under the control of one man.

Q. And he would see that the cases are ripe for hearing?

A. That of course is a matter of detail.

Dr. DeSouza.—*Q*. Would you place him at the head of the establishment of the District Judge's Court also?

A. Yes.

Q. And you would make him also a superintendent of the District Judge's office?

A. There will be no separate office of the District Judge.

Q. He would be the head of the District Office?

A. Yes.

Q. Like a Registrar?

A. Yes.

Q. What class of man would you select?

A. A munsif.

Q. A senior munsif?

A. For a small district a junior munsif and for a large district a senior munsif.

Q. Do you anticipate any friction between the senior sub-judge and the registrar if he is junior to the former?

A. His appointment will be altogether different. The other judicial officers having nothing to do with the office there would be no friction.

Mr. Justice Stuart.—*Q.* Would it involve very much expenditure if you appoint a Registrar to the most congested Courts?

A. In this province it will cost to the extent of one lakh.

Q. You must remember that if you have got 5 courts and each court spends an hour a day in doing uncontested work and you put up a Registrar to do that 5 hours work, you could reduce your courts by one.

A. Yes, in time.

Q. Instead of reducing your courts at present, you will be clearing off your arrears.

A. Yes.

Dr. DeSouza.—*Q.* Would it not be possible to reduce the present expenditure if you appoint a Registrar by dispensing with the more highly paid heads of offices?

A. There would be some reduction in that way; but there will not be considerable reduction.

Mr. Mohammad Hussain.—There is no doubt that there will be substantial curtailment of the present ministerial staff by appointing Registrars.

A. You will not be able to reduce it with regard to numbers. You might curtail some of the higher posts.

Q. We expect some savings at least.

A. Yes, some but not considerable.

Mr. Justice Stuart.—*Q.* The next point is you pointed out the terrible waste of time in serving processes in execution over and over again. I want to put forward the following suggestion for your opinion. Is there any reason why when once you get the party before the court, you should not make him give an address at which all summonses to him could be sent by post and that this continues through execution and through appeal? It is open to him to inform the Court that he has changed his address at any time.

A. People are not so advanced.

Q. It is not a question of being advanced but a question of being given an order to obey.

A. But they will not obey.

Q. If they are told they must, they will have to. I admit the first process must be served by a process-server "and you must have the party before Court. But once before the Court why should he take no responsibility in the matter?

A. What about those cases in which *ex parte* decrees are passed?

Q. The rule does not apply because the man is not before the Court. It only applies when he is before the Court. The first thing he must be told is "give an address where letters will reach you and all notices in future will be sent to that address."

A. Is there any necessity of asking him to give his address? The plaint gives it. There is a possible difficulty in serving letters in the mofussil. The peon goes with the registered letter and the man is not in the house. How will he serve it? There are only females in his house. They won't receive the letters.

Q. Do you mean to say that there will not be a single male on the premises?

A. It is not an unusual thing.

Q. Generally speaking?

A. Of course.

Q. When there are no males is it returned?

Mr. Mohammad Hussain.—There comes the question of literacy?

Mr. Justice Stuart.—There is no difficulty in receiving it and giving the same to the male member.

A. I think so. Thumb impression could be obtained.

Mr. Mohammad Hussain.—It will not be practicable.

A. I shall not go to that extent. But it is possible in some cases but in each case it will not be possible.

Chairman.—*Q.* Is he to wait until the man appears or is he to serve on the members of his family? If the Court is satisfied that he has been served will it decree *ex parte*? Will this hold good for purposes of execution as well as for purposes of suits? Will it be possible to do further service by registered post or service by peon?

A. They will say that the address and name are changed. That is the habit of the people of the country. Registered letter might not reach him at all.

Q. Suppose the party, after the decree of the case, could not be summoned, would you think that service on the pleader will be sufficient?

A. In this province the pleader's connection ceases after the case is decreed and it will be impossible for the pleader to hunt out his client for the case.

Mr. Mohammad Hussain.—Generally pleaders engaged in the original case are not engaged in execution cases.

Chairman.—*Q.* At any rate you know very well that the execution will be continued. You agree with me that there is no need for any further notice. If the decree-holder of the case is to attach his house, will it not be objected to?

A. As a matter of fact it will be objected to. The sale proclamation should be served upon him.

Dr. DeSouza.—*Q.* Is there any sanctioned scale for the establishment—clerical establishment—of the Munsifs and Subordinate Judges and District Judges?

A. Yes.—There is a sanctioned scale, *vide* Ministerial Service Commissioner's report.

Chairman.—*Q.* Have you a similar scale as regards the peons and nazirs?

A. We have. That is special for Bihar.

Babu JOGENDRA CHANDRA MUKERJI, Vakil, Muzaffarpur.

Written Statement.

Question No. 1.—In this connection what I would require as the most important thing to keep in view is that the cases of which both parties or either of them desire expeditious trial should be taken up for disposal before these of which the parties do not so desire. This may be achieved by the appointment of a special officer suggested below.

The following statements should be taken as relating to suits and proceedings in the District Courts only. Regarding the time required for disposal of title and money suits it is rather difficult to differentiate between these two classes of suits as regards the time necessary for disposal. The time required for disposal of suits does not necessarily depend upon its being a title or money suit. The time must necessarily depend upon the kind and variety of evidence which the parties offer and whereon the decision of a suit depends. A title suit may be very short and a money suit may require longer time. Of course, title suits involving facts of a complicated nature necessitate prolonged hearing.

Subject as above, I would suggest the following figures, *viz.* :—

(A) (*ii*) (*a*) One year.

(*b*) Six months to one year.

(*c*) Six months to nine months.

Regular appeals nine months, civil miscellaneous appeals not more than six months, Small Causes three months.

(*iii*) Munsif's Court suits,

(*a*) Title and (*b*) Money—nine months and six months.

(*c*) Rent—three to four months.

(*d*) Other miscellaneous cases three months.

(B) Claims proceedings in execution in all courts should be decided within two to three months according to the nature of the case.

Question No. 2.—There is no doubt that the time now occupied in the disposal of suits, appeal and other proceedings is generally much more than it should be.

And in my opinion the main cause of delay is the paucity of officers. The Judicial Officers as a class work hard. In addition to the work done in the court they have to devote a large amount of their time at home in writing judgments and orders.

Question No. 3.—The real and to my mind the only effective remedy is increase in the number of judicial officers. Apart from this, whatever else may be suggested will not either materially expedite disposals or remove congestion of work. I would however submit the following for consideration.

The period of the pendency of a proceeding may be divided into two stages, *i.e.*, (1) the stage of the preparation of the case from its institution to the time when the actual hearing before the court begins: this may be termed preliminary stage, (2) the stage from the time that the hearing of the case begins, that is, the period occupied in the hearing. This may be termed the final stage.

There is yet another stage namely the period intervening the close of hearing and the delivery of judgment. This may be left out of consideration because ordinarily the Judges try to prepare their judgments within as short a space of time as possible.

As regards the preliminary stage, it consists of the preparation of the case. This generally takes a longer time than is either necessary or proper. Although all steps for proceedings in the preliminary stage generally speaking depend upon the parties yet the court has to keep a general supervision over these. This stage of a suit is in certain respects an important one. The Judges however cannot be expected to look after every detail in this stage.

As a matter of fact the whole thing is left to the law agents of the parties concerned. I would propose the appointment of an officer who should be a trained lawyer, preferably one of the rank of a munsif, who under the denomination of registrar or such other designation, should be placed in charge of looking after the preparation of cases up to the completion of the preliminary stage. It should be the duty of such officers to see to the proper service of all summonses and notices, production of documentary evidence, summoning of witnesses, discovery and other matters as provided in the code:—all which if done in proper time and under the direction of such officer will save the court some time and a lot of trouble. The officer should be clothed with authority to pass all executive orders, except such as may require judicial decision for which reference may be made to the court for necessary orders. It should also be the duty of this officer to select cases ready for hearing and put them up in the cause board as cases of which the hearing is to commence. The present practice of fixing dates of hearing irrespective of whether it is possible for the court, having regard to the state of its file, to take up the hearing should be altogether done away with. It serves no useful purpose and the certainty of the case not being taken up for hearing on many of these dates helps unpreparedness.

As regards (*ii*), *i.e.*, the stage from the commencement of the hearing: All proceedings in this stage must necessarily be before the Judge himself.

There are rules contained in the Civil Procedure Code and the Evidence Act as guides—but they are of a general character. It is hardly practicable to lay down any set of hard and fast rules as guides for shortening the hearing of cases. It is not advisable also to do so. Besides, each case has its peculiarities which must be attended to. If the Judge before the hearing commences ascertains the relevant facts connected with each issue and regulates the evidence so as to confine it to such facts some time may be saved. The scope and extent of the cross-examination of a witness must to a great extent depend upon the cross-examiner who presumably frames his questions with some object in view. All that the Judge can do and it is proper for him to do, is to see that the cross-questions are not objectless, and so long as these are directed to falsify facts deposed to by the opposite party's witnesses or to disclose facts which would go directly or indirectly to support his own case and elucidate facts showing the position in life of the witness as affecting his credibility and such other matters, there can be no ground to interfere.

Considering the difficulty that a Judge has in correctly deciding cases on facts where he has to depend upon evidence of witnesses it is desirable that full scope in the matter of cross-examination should be given and cross-examination should not be arbitrarily cut short. It is in the nature of things impossible to lay down any arbitrary standard in this connection. These are the main features to be taken into consideration.

Question No. 4.—There is no object in changing the nomenclature of judicial officers as it stands in Bengal and the Upper Provinces. This nomenclature has existed so long that it is undesirable to change it.

In appointing Judges of the High Court, the claims of the vakils practising in the Mofussil have been neglected. Yet one may without fear of contradiction say, that among vakils practising in districts there are men as efficient as those practising in the High Court, moreover, he by reason of his experience will make a better judge of facts. Although knowledge of law must necessarily be a necessary qualification yet what is wanted in a Judge is the capacity to discriminate between what is true and what is untrue. This capacity to find out truth must depend upon wider experience, a knowledge of the habits of the people and their dealings with one another. Unless the state be prepared to spend more money there is no use considering the question. The present system may be maintained.

Question No. 6.—Transfer of judicial officers is necessary.

Question No. 7.—It is a mistake to judge the efficiency of a judicial officer by the amount of work he turns out. What the people do appreciate is rather the quality of the work than its quantity. A Judge who is slow but capable of finding out truth is more appreciated than one who can show a larger outturn of work. The reason why there is inordinate increase in the number of false suits and proceedings in courts both Civil and Criminal is the large number of incorrect decisions. It is a matter of common knowledge that the people generally have come to entertain the idea that litigation is a mere game of chance.

Question No. 8.—There is no reason to think that concentration of many Civil Courts in one place causes delay. Neither is it the case that delay is caused by the courts having to wait for members of the legal profession.

Question Nos. 9, 10 and 11.—Unless there is increase in the number of officers mere change of jurisdiction cannot bring about speedy disposal of cases.

Question No. 12.—Some of the administrative and judicial works now in the hands of a District Judge may be given to a Sub-Judge. Already some administrative work such as looking after copying department, nazarat and accounts, are done by Sub-Judges or Munsifs.

Question No. 13.—Sub-Judges may be invested with the powers to try probate and succession certificate cases. As regards Land Acquisition cases these may be left to be disposed by the District Judge as at present.

Question Nos. 14 and 16.—I am against enhancing the jurisdiction of Small Cause Court beyond what they now possess, neither would I suggest the introduction of summary procedure as contemplated in Question 16 but Small Cause Court may be given jurisdiction to decide rent suits based upon registered kabuliats or previous decrees as suggested in 16 (*b*) subject to this that if in a case any controversy arises which requires adjudication the matter should be tried regularly.

Question No. 17.—A special class of Sub-Registrars, but not Sub-Registrars as a class, may be given jurisdiction to try petty money claims not exceeding Rs. 50 in any case.

Question No. 18.—I would not curtail the right of appeal as far as it now exists, but the right of appeal in matters arising in execution proceedings may to a certain extent be curtailed, provided a special officer be placed in charge of all execution cases.

Question No. 19.—Instead of curtailing Letters Patent appeals I would rather have all appeals tried by two Judges instead of one, but in any case I would not advocate the whole-sale abolition of Letters Patent appeals. Where controversial questions of law or interpretation of document are involved Letters Patent appeals should be allowed.

Question No. 21.—Requiring every appellant to deposit the full decretal amount before second appeal is allowed to be filed will work undoubted hardship if not injustice and in effect that would be denying the right of special appeal altogether.

Question No. 23.—I don't think there exists any necessity to introduce any change in the law relating to revision by the High Court; the present law is sufficiently restrictive. On the other hand, the present rule should be relaxed in favour of allowing a revision against an order attacked on the ground of its being illegal or against an order manifestly unjust and where revision would have the effect of preventing further litigation.

Question No. 24.—No change in the procedure regarding the hearing of suits and proceedings is called for. If however the court takes the precaution of examining the parties at the first hearing and before the settlement of issues not only to find out the points in controversy but generally as regards the material allegation of the parties, the final hearing of the case may in some cases be shortened. But this examination should be conducted by the court itself. The cross-examination of parties at this stage should not be permitted. In the case where parties are women or illiterate or minors suing or being sued through next friends or guardians and in the case of persons who are not expected to know facts which have happened long ago their examination should not, if objected to, be insisted upon.

I would prefer to make general observations regarding the other matters some of which are covered by questions instead of treating each question separately because the subjects in several cases overlap one another.

(*a*) *Service of Summonses.*—A great deal of difficulty is expressed by judges in connection with service of summons. It is the parties who are primarily responsible in this connection. And the low paid process-servers find themselves in many cases drawn to accommodate the parties in the way they desire. In addition to the cases where a party with the object of obtaining a fraudulent order or decree from the court manages to have a false service return lodged, cases do happen, in which the party to whom summons or notices are issued manages to introduce into the service proceedings some inaccuracy to be taken advantage of later on, to show that there was either no service or fraudulent service. In this way names of persons long dead, persons described as residents of the village who really are not, and fictitious names of persons are introduced. Service through Post Office is subject to the same objections, because, with a designing party it is as easy, if not easier, to win over or bribe the postal peon as a court chaprasi. And in the case of a postal peon he is not under the direct control of the court and the security which exists in the case of a court chaprasi will not exist.

The service of summons or notice must be through an agency which is directly under court's control.

There may be some guarantee of proper service if the serving peon be required to have the service of processes verified by the head member of the village panchayat; and in cases where the service of the head member of village panchayat cannot be obtained, such other member of the panchayat, as may be selected by the panchs, may act in his place. If this suggestion be accepted it will be necessary to keep in the court office a list of the members of the panchayat and the name of the villages of which they are the panchs and the name of the head panch or other member of the panchayati as may be selected by the panchs to act in this connection. This list must necessarily be prepared by the Sub-Divisional Officer or such other officer who looks after the panchayats, and sent to the courts concerned under his signature. Some amendment in the rules relating to the duty of panchs will be necessary.

Execution Proceedings.—Here the decree-holders generally meet with obstructions and delay.

It is necessary that there should be a special officer appointed in the same way as the officer to look after the preparatory stage of a suit. In localities where considering the amount of work one officer can conveniently look after the preparation of the suits and proceedings as well as matters in execution of decree the same officer may be entrusted with both kinds of work.

The duty of the officer to be placed in charge of execution cases should be (*i*) to see that execution applications are proper and according to law (*ii*) that all processes are properly served, (*iii*) to fix the value of properties at which bids should commence, and to hear evidence and arrive at a conclusion to ascertain the value of the property, (*iv*) the existence of encumbrance, if any, on the properties and (*v*) generally to settle all matters and to do all that may be necessary to secure execution of the decrees. In case of application for issue of warrant the officer should see that it is a case where warrant of arrest can be issued. He should also see to the proper execution of the writ for delivery of possession and deal with cases of obstruction to execution except judicial determination as to matters regarding the determination of any question of right or title, which necessarily will have to be done by the court. In all cases of taking of accounts in execution proceedings and also in matters of account relating to partnership or the liability of a partner's share to attachment in execution, execution of instrument in terms of courts decree, should all be looked after by such officer. He will also look into the accounts of receivers submitted to the court and all matters of an administrative nature arising out of the appointment of a receiver.

There are various matters which at present are not properly attended to and these will give to such officer plenty of work.

All questions relating to limiting the right of the applicant to execute the decree, together with all questions requiring judicial decision of the court should be left for the decision of the court.

Limitation regarding execution application.—Regarding execution of decrees for money up to the limit of Rs. 10,000, the period of limitation as now fixed by the Limitation Act may very well be abolished and in its place the decree-holder may be given the right to execute his decree as many times as he finds convenient within the period of 12 years from the date of the decree subject of course to the proviso, firstly, that he should begin his endeavours to realize his decree within one year from the date of the decree and if he fails to satisfy the court that he has so endeavoured and has failed to get satisfaction notwithstanding such endeavours within three years, the court will maintain the order for payment of interest, and in case of his failing to satisfy the court that he has made endeavours and has not succeeded in obtaining satisfaction the court will have power to direct interest on the decretal amount from the expiration of three years from the date of the decree, and secondly in case the decree-holder is unable to get satisfaction of his decree within twelve years notwithstanding endeavours and due diligence by reason of the judgment-debtor concealing his property and otherwise preventing the realization by means of fraud or force within this period he may be given one more opportunity to realise his decree. But the decree-holder must prove that he has all along been on the alert and has not allowed the time to pass away without any adequate steps having been taken for realisation of his decree.

Decrees in mortgage suits and execution thereof.—This matter has been dealt with later on. A great deal of confusion and necessary litigation arise where there are more than one mortgage on the same or same set of properties. The suggestion that the sale in the case of a mortgage decree should be free of encumbrnaces is a desirable one. Already there is some provisions in the code authorising sales to be made free of encumbrances but inasmuch as this cannot be done without the concurrence of all the parties concerned this procedure is seldom resorted to.

In order to enable the court to sell free from all encumbrances it would be necessary that all parties whether their mortgages are prior or subsequent and all transferees by way of purchase or otherwise together with all others who may have a charge on the mortgage property or any part thereof would have to be made parties. It would be better to have them on the record at the suit stage rather than in execution proceedings, so that if the parties have anything to urge they may have an opportunity of doing so and the matters between the parties may be decided once for all in the original suit. Of course when there is no contest as to the existence or validity of a mortgage or the amount of the mortgage money then due, the matter is easy of solution. The only thing that would then remain is the consent of the mortgagees to the sale being held free of encumbrances and if on the suggestion of any of the parties the others agree the question of selling free from encumbrance may be decided in execution proceedings.

In order to effectuate this proposal, change in the law would be necessary.

In my opinion the cases where the equity of redemption has been purchased by others, the rights of these purchasers to free the properties purchased by them by redemption should be maintained. I think the court should be given power to distribute mortgage money over the several properties mortgaged and specially where any part of the mortgaged property has been purchased by others. It happens that persons purchase one or other of the mortgaged properties by paying a high price; and this they do with the object of securing such properties. To put up these properties to sale again will operate very harshly against such purchasers. The sale free from incumbrance should be confined only to cases where there are mortgagees only and no purchasers, unless it be that the purchasers themselves agree to the sale being held of the properties brought by them.

Question No. 28.—A rule requiring the party to give the postal address both of himself and his adversary may be of some use but his kind of service should not be relied on as independent proof of any service.

Question No. 31.—The present rule regarding the framing of issues is sufficient. For the purpose of framing issues the judge should hear all parties and then frame the issues. The parties may also be required to submit in writing the issues which they respectively suggest.

In preparing the issues suggested save those which arise on the whole case, the parties should be required to note against each issue the particular paragraph of the pleadings.

Question No. 32.—The provisions of Chapters X, XI and XII are not usually resorted to in the mofussil courts. These relate to preparation of a suit in the first stage and has been separately dealt with.

Question No. 33.—Has already been dealt with.

Question No. 34.—Has already been dealt with.

Question No. 35.—In some cases unnecessary oral evidence is no doubt introduced but this cannot be prevented. Giving power to the court to reject witnesses and otherwise exclude evidence may cause harm. Production of evidence must be left to the parties and their legal advisers.

Question No. 36.—In uncontested miscellaneous matters affidavit may be used as proof but in contested suits the claim must be proved by witnesses regularly examined.

Question No. 37.—The suggestion is simply absurd. If lawyers have faults judges also have theirs. Moreover, giving this power to the Judge will make him more autocratic and this will be a perpetual source of friction between the Bench and the Bar.

Question No. 40.—This may be done but somebody must give information of the death to the court.

Question No. 41.—I do not know that any delay is caused in the disposal of suit by reason of the court having to appoint a guardian *ad litem*. A practice has grown up, of late, of the person nominated by the plaintiff for appointment as guardian *ad litem* of a minor defendant, either refusing to act as such guardian or not appearing at all to signify his consent to be appointed. The court in such cases generally appoints a junior pleader as such guardian. I do not think that the suggestion made in this question will improve matter inasmuch as the motive which actuates the nominee of the plaintiff to refuse to accept the guardianship (which is to put the plaintiff to additional expenditure in having a pleader appointed) will remain.

Question No. 42.—The courts generally are averse to grant *ex parte* injunctions, except where the urgency of the case, as represented by a party, requires immediate issue of injunction. The court's discretion to make an *ex parte* order directing the issue of an injunction provisionally must remain. Otherwise the very object for which an injunction is wanted may be frustrated by delay.

Question No. 43.—Requires no reply.

Question No. 44.—The practice has grown up to hear evidence on merits although strong grounds exist enabling the court to dispose of suits on preliminary objections. Unless the issue in bar is indubitably strong and unless the parties themselves agree to the suit being disposed of on a preliminary ground, it is advisable to complete the evidence.

Question No. 45.—Dates generally are fixed by the judges themselves. It is difficult to say that delay is occasioned by reason of the fixing of dates.

Question No. 46.—Some judges consult. I will not say that delay is occasioned by reason of the judge's failure to ask pleaders as to the time the examination of witnesses and hearing of argument are likely to occupy. The estimate of time moreover proves inaccurate. The uncertainty of duration of the hearing puts the parties of the next case to some inconvenience, but this is unavoidable.

Question No. 47.—So far as these districts are concerned my experience does not bear out the suggestion made in this question. The court generally insists on examination of witnesses on commission whether of plaintiff or of defendant being finished before the hearing of the case begins. As regards examination of witnesses by commission there should be a rule that in case a party has to rebut the evidence of his adversary and for such rebuttal he is under necessity to examine a witness, who can be examined only on commission, the court should give the party so situated opportunity to examine his witnesses after his adversary has finished his.

It is difficult to devise means to control examination of witnesses before a commissioner. Also, giving to the commissioner power to control or cut short examination or cross-examination is likely to do more harm than good.

Question No. 48.—If the scheme submitted above be accepted the question of the adequacy or otherwise of adjournment costs will not arise. In the matter of adjournments, of course, there is a general leaning among the litigating public towards obtaining them.

But it is not the parties alone who are to blame. In the present state of things it is difficult for the court itself to say for certain on which date it would be in a position to take up a case. A large number of adjourned dates must therefore elapse before the court can take up the hearing. It also happens that on several previous dates the parties were ready with their evidence but the court was unable to take up the case.

In addition to the delaying habits of the people, their social customs also, necessitate adjournments, moreover, it is difficult to get witnesses to attend the court during a marriage season or when plague, cholera, small pox, or any epidemic disease occurs in their villages. On such happenings the residents of the village so affected will not come out of their villages nor will any outsider enter into them.

However the right principle to follow, as I have said elsewhere, is to provide for expeditious trials of such cases in which both parties or either of them want the same.

Question No. 49.—Hearing of cases, when once begun, is generally conducted from day to day.

Question No. 51.—The matter has been dealt with.

Question No. 52.—I have already dealt with execution proceedings generally.

Question No. 53.—Not desirable.

Question No. 54.—Desirable. In this matter there is conflict of judicial decisions. Some High Courts recognise Executing Court's authority in this respect.

Question No. 55.—Desirable.

Question No. 56.—I have already dealt with the matter.

Question No. 57.—Considering the habits of the people, adoption of such a rule as suggested here is undesirable.

Question No. 58.—In addition to the suggestion in this question, I would propose the courts taking cognizance in execution department of payments made in accordance with the terms of the decree when the decree, whether based on compromise or otherwise, incorporated the undertaking on the part of the decree-holder to notify satisfaction or payments to the court or the decree contains an order to that effect.

Question No. 59.—The first proposal in Question No. 59, may be accepted; but regarding the second proviso to Rule 16, Order 21, this proviso may be deleted and a substituted rule should be introduced either as an independent rule or as a second proviso, permitting the judgment-debtor assignee to execute the decree only to the extent of the liability of the other judgment-debtors, and giving to the court power to decide the amount of such liability and making the order passed in this connection appealable. There may be cases, and in fact such cases do happen, where although several persons appear as co-debtors in a decree yet the liability to satisfy the decree is not on one of them. In such cases if the party, really liable purchases the decree by paying off the decree money or where the liability of the judgment-debtor is divided, the assignee judgment-debtor, should not be given the right to realise more than what would be legitimately due to him.

Question No. 60.—Deletion not desirable. To permit both arrest of the judgment-debtor and attachment of his property will be giving to the decree-holder power to criple the judgment-debtor's ability to try to raise funds to pay up the decree.

Question No. 61.—(*a*) One general notice giving information of the execution application as well as of the name of the party by whom and the grounds whereon the same is made will be quite sufficient.

Deletion of Order XXI, Rule 22, altogether is undesirable.

Question No. 62—I would leave Order XXI, Rule 26, as it is.

Question No. 63.—One general notice without specification of time and occasion will not be sufficient; the parties must be informed of the time when their appearance is necessary. If the general notice gives all necessary information the same may be considered sufficient.

Question No. 64.—The service of the sale proclamation on the judgment-debtor will be an improvement. I am against simultaneous issue of attachment and sale notices. The vakil who appeared for a party in the original suit cannot be expected to look after execution case as well.

It would be unjust to fix the responsibility of the kind suggested in the question on the vakil.

Question No. 65.—The members of the village panchayat are in many cases found to be interested in one or the other party. In almost all villages there are parties and the panchs may be belonging to one or other of them. However the help of the village headman may be requisitioned in case the decree-holder agrees to this being done.

Question No. 66.—The present law requires a mortgagee suing to implead only such persons as parties who are or may be interested in redeeming the particular mortgage. Accordingly a prior mortgagee need not be impleaded.

The sale of a mortgaged property free from all encumbrances is no doubt desirable. This is so in the interest of all parties concerned. The advantageous position held by the person who holds the first mortgage would naturally make him indifferent.

If such a certificate as is contemplated in (*a*) be procurable, the plaintiff may be required not only to make all holders of mortgages whose names appear in the certificate, but power may be given to the court to make them parties, all expenses being borne by the plaintiff in the first instance. All persons so impleaded should plead their respective mortgages, prove them, and produce evidence to show that the amounts claimed by them are due. The court should have power to decide all questions so arising between the mortgagees and should by its decree declare the rights of each of the parties and the amount due to each.

Where the same property is mortgaged in all the mortgage deeds the question is simple enough to decide.

But when the property mortgaged is more than one and different mortgages cover different parts of one or other of the mortgaged properties, necessity for apportioning the mortgage moneys would arise. The court should be given power to do this.

However, the sale free of incumbrances should be confined to cases of mortgages only; and this should not be resorted to where any one or more of the mortgaged properties have passed by sale to purchasers. There may be cases where persons with the object of acquiring a property have paid a large, even a fancy price for a property. If the property in such cases be sold free of incumbrances treating the purchaser as occupying the place of the mortgagor great injustice will ensue. So where there are purchasers in my opinion they should be given opportunity to redeem mortgages by paying the amount legitimately payable for the share of the property purchased by them. And for this purpose the court should apportion the mortgage moneys and declare the amount or amounts payable for redemption.

As regards the suggestion for dismissal of the suit appearing in (*b*) I think this drastic form of penalty should not be insisted on. I would propose, instead, giving to the court the power to implead such persons as parties.

Regarding supply of information to the court as to the mortgages and charges the rule should require the mortgagor to supply the information and this duty should also be shared by the other mortgagees who are parties. If the court examines the mortgagor on oath in this connection the necessary information will be forthcoming.

Question No. 66.—(*c*) Ordinarily six months time is given which cannot be considered too long.

I think the making of a final decree is necessary. In any case a proceeding has to be drawn up after notice to the defendants to ascertain to what extent, if any, the provision order for payment has been carried out. So there will be no gain in doing away with the final decree. If the decree is so framed as to contain an order for payment of whatever may be the unrealised balance, the making of a separate personal decree will not be necessary.

Question No. 67.—I have already dealt with the subject by proposing delegation of the work to a separate officer.

Question No. 68.—If the injunction sought is to stay the execution of a decree impugned as fraudulent, the court within the jurisdiction the party affected by the fraud resides or the property sought to be sold is situate should have jurisdiction to entertain the suit.

To insist on the contrary would in many cases be tantamount to denying the aggrieved party means to obtain justice.

Cases do happen, and have happened, of *ex parte* decrees having been obtained in distant places such as Calcutta, Delhi, and in the Bombay Presidency against persons living in Muzafferpur or Champaran Districts and brought up to Muzafferpur or Champaran for execution. In such cases certainly the court wherein execution is sought should be permitted to entertain claim for setting aside such decree and to issue consequent injunction.

The injunction being against a party and not against the court no question of the violation of the dignity of the court can properly arise.

Question No. 69.—Judgment-debtor when arrested and brought before the court get released by saying that he proposes to apply to be declared insolvent (Section 55, Clauses 3 and 4). In many cases the applications thus made are not *bonâ fide*. Ordinarily seeing that order for the issue of a warrant is generally made by following the procedure laid down in Order 21, Rule 40, and after hearing what he has to urge against his arrest, there exists no necessity to release him upon a mere representation of his intention to seek protection under the insolvency law. What I would suggest is that an arrested judgment-debtor should not be released on merely expressing his desire to apply for insolvency, but the court should examine the judgment-debtor on his being brought before it arrested, as to the property he owns, the names of his creditors both secured and unsecured, whether under decrees for otherwise, the purposes for which the debts were incurred, the amount thereof, and what efforts, if any, he has made to pay up his debt and only in the event of the courts being satisfied that the judgment-debtor has not been able to pay his debts notwithstanding *bonâ fide* endeavours and that he has not incurred the debts recklessly, the court may release the judgment-debtor to enable him to apply for insolvency subject to his furnishing a surety undertaking to produce him before the court on the insolvency application. if made, being rejected, or no insolvency petition being filed within a specified time to be named by the judge.

Question No. 70.—Warrants are evaded by various means but I cannot say whether the judgment-debtor absconds. It is difficult to suggest any remedy in this connection. I do not see how arrest or attachment before judgment would operate to prevent delay.

Question No. 72.—My answer to the first part of this question is in the affirmative. As regards the second part such a doctrine will cause more injustice and harm.

Question No. 73.—In such cases where originals have been destroyed briefs, printed for use in High Court and Privy Council appeals, should be permitted to be used as secondary evidence but where originals exist and copies are procurable certified copies must be insisted on. Certified copies may be obtained according to the size of the document even in a day.

Question No. 74.—In my opinion it is not desirable to make the Law or Limitation more stringent except in the cases of an auction sale regarding which it is desirable to free the title of purchaser from doubts and from the apprehension of his purchase being disturbed. The present rule of limitation in this respect is sufficient. The only alteration in Limitation Law I would suggest is to require applications under section 47, Civil Procedure Code, which may relate to sales being made within one year from the time when the right to make the application accrues, subject to the proviso that where the person making the application is on account of absence from the place or otherwise kept ignorant of the fact necessitating the application the one year should run from the time of knowledge.

Question No. 75.—My views have already been given.

Question No. 76.—My answer is in the negative. Instead of simplifying matters this will introduce complications and considering the habits of the people the decrees in value of the properties and other causes the suggestion will cause much harm and injustice.

Question No. 78.—The doctrine of part performance as an equitable doctrine should on no account be interfered with. This doctrine has come into existence as a rule of equity to give relief against the stringency of the statuary provisions concerned. A great deal of human business is transacted on mutual trust and good faith. This state of things will continue notwithstanding enactment of statuary rules. The general public do not and cannot be expected to know the law (the usual presumption of knowledge notwithstanding) in this country specially where illiteracy is so dominant and as the enactment of a rule will not stop transactions based on good faith and trust there must be some remedy to prevent fraudulent advantage being taken by one party against another and the courts must possess power to grant adequate relief.

Question No. 79.—I will on no account accept the proposal in this question. A rule like the one suggested will help dishonesty and fraud from the effect of which it is and it should be the object of courts of justice to free persons. With regard to legislative innovations what has to be borne in mind is the gross ignorance and simplicity of the people in general, and the amount of advantage which it will be open to designing persons to take of such ignorance and simplicity.

Question No. 80.—I think the suggestion in the first part of the question is too much drastic.

Thumb impressions ought to suffice.

Question No. 81.—The suggested rule is too much drastic and is undesirable. The law as now administered which requires the party so pleading to prove his plea and to show that the apparent state of things is not the real state and that such plea cannot be available against a *boná fide* transferee for value is quite sufficient.

Question No. 82.—No. Those who go in for frivolous suits with an object will not mind a bit of an additional expenditure. On the other hand increase in the court-fees which is already too high will affect the honest suitors.

Question No. 83.—I do not quite understand the question. If it is meant that the attestation of a mortgage deed by any witness is to be done away with, I must say such a proposal is undesirable. On the other hand, I would require deeds of sale and leases being attested by witnesses.

Although the present state of the law does not require attestation by witnesses of deeds of sale, lease and such other deeds, in ordinary practice every deed is attested by witnesses.

Will any deed of sale of a very valuable property simply signed by the vendor and not signed by any witness whatsoever be accepted by courts? Especially if the execution be denied.

The necesisty to have a deed attested by witnesses is some check against fabrication.

The examination of attesting witnesses is also necessary. The rules requiring attestation of document are based on long experience of human conduct and as a protection against fraud.

In my opinion all documents transfering property should be attested.

Question No. 84.—All cases where the persons claiming property of right has means to sue and notwithstanding this execute deeds either by way of transfers or contract should be considered as Champertous and dismissed.

Question No. 85.—Yes, only when the parties interested in the matter agrees to the particular person to act as referee. But if the reference to the referee be for expert advice, it is desirable that he should be examined in court.

Question No. 86.—Without expressing any opinion as to whether multiplication of Law Reports tends to interfere with speedy justice, which is a point on which there must exist conflict of opinion, all I need say is that many indifferent decisions are published, which at times introduce confusion and necessarily conflict of ideas. Unless it be possible to permit only one set of reports for each High Court, attempt at curtailing the number of Law Reports must be given up.

Question No. 87.—Codification is good in certain respects. It is very difficult to give any opinion as to the merits of codification without reference to the subject to be dealt with.

The last part of the question is too involved and difficult to enable any opinion being given off hand.

Babu JOGENDRA CHANDRA MUKERJI, Vakil, Muzaffarpur, called and examined on Saturday, the 28th June 1924.

Chairman.—*Q.* Mr. Mukerji, you have been a good many years in practice?

A. Yes, for 42 years.

Q. Your work has been in the District Courts mostly.

A. Yes, except for 3 days in the High Court.

Q. You are one of those gentlemen who qualified as vakils but practise in District Courts.

A. Yes.

Q. When you began to practise as a vakil you were a vakil of the Calcutta High Court.

A. Yes.

Q. Have you experience of Munsif's Courts as well as Sub-Courts and District Courts?

A. Of course I must say that I have some.

Q. Have you more experience of the High Court than the Munsifs Courts, Sub-Courts and District Courts?

A No.

Q. Do you think that the Munsif in Bihar manages his file on the whole fairly well?

A. I should say 'Yes.'

Q. Have you even thought of any way in which Munsifs Courts could be improved as regards the method of disposing of cases?

A. As regards that, it is very difficult to say. We ought to differentiate between 4 Munsif, a Sub-Judge and a District Judge in original suits. The procedure is the same. Of course it does not seem to me that there is anything to be said as applying to a Munsif which cannot be said with reference to a Sub-Judge.

Q. I am thinking rather of the management of the cause lists than the actual procedure in the usual sense. Are the Munsifs a little more congested in this province than the Sub-Judges?

A. Yes.

Q. They have a greater mass of small work and they have got more cases.

A. Yes.

Q. In your part of the world, do you have a large number of rent suits from November to March?

A. Formerly there used to be a very large number of them although at present the number has considerably reduced. But still there is a large number to increase the file.

Q. Have you ever thought of any improvement that could be made in the way in which these rent suits are set down for hearing and disposal?

A. The general practice is that in suits of the same village and between the same landlord and tenant in which the same set of village papers is produced and the same set of witnesses are examined, and the oral evidence is the same, the Munsifs receive evidence in all cases at one time. To this procedure, the parties generally agree. At the time of writing judgment, they take each case separately and consider each case on its merits.

Q. The great bulk of such suits are disposed of *ex parte* in fact.

A. No. They used to be so formerly. Very few are adjusted now. Certain portion goes *ex parte* and there is contest in others.

Q. I think the *ex parte* cases are by far the general bulk.

A. I cannot give the present figures.

Q. What happens in your experience to the Munsif's other work—his money suits and title suits from the period when these cases come into his court, *i.e.*, from November until March, when I presume they are being disposed of? His other work has to stand aside, I suppose.

A. What is generally done is this. There are more than two Munsifs say in Muzafarpur and the Sadar. The other work is divided. One Munsif is delegated with power to dispose of rent suits as well as petty money suits. Title suits generally go to another Munsif. That is how the work is generally done and wherever this division exists, I don't think any delay takes place on account of that.

Mr. Justice Stuart.—*Q*. You are in favour of division of labour? Let each man take one class of work.

A. Yes.

Chairman.—*Q*. What is the system by which additional Judges are sent to particular places to cope with the rent work?

A. I don't know. At times, additional Judges are sent. Of course, I have no experience about that.

Q. I see you make a suggestion that there should be an officer of the standing of a Munsif who should act as Registrar. I take it that it would be applied to the headquarter stations and not to the outlying stations.

A. Of course where there is a large number of cases and more than one officer, it can be applied. Generally in Sadar there are the largest number of cases and important cases.

Mr. Justice Stuart.—*Q*. With regard to the Registrar's system it should be introduced in places where there is sufficient work for a Registrar.

A. Yes, in sadar.

Chairman.—*Q*. What work would you entrust to the Registrar?

A. Everything except those matters which require judicial decision.

Q. There is no reason why he should not do some uncontested work. He is a sufficiently senior man and he might do that work which might perhaps be limited under the orders of the District Judge.

A. Yes, he can do that. But my idea is that the Registrar, if appointed, must look into the order sheet of each case and see what is wanted to be done in each case, send for the pleader and ask them what should be done, how he wants to proceed further and he can settle all these matters speedily.

Q. Do you include in that settlement of issues and orders about documents?

A. Settlement of issues must be done by the court. As regards the receiving of documents, discovery and inspection they may be left to the Registrar but if the parties refuse or neglect and if a final order is wanted by which the court would dispose of the suit one way or the other, such orders must not be passed by the Registrar.

Q. But surely he could decide *ex parte* matters.

A. Yes. In case of discovery if the party against whom discovery is wanted does not comply with the order of the court and then if an order is necessary for a final step I would refer that to the presiding officer.

Mr. Justice Stuart.—*Q*. Suppose a plaint is filed and the case comes before the Registrar and the summons has not been served. But at the time of the first appearance the plaintiff applies for an *ex parte* injunction. I take it you would not allow the Registrar to decide that but refer that to the presiding officer.

A. Yes. The principal idea is that the delay does not generally affect much, in the case of those persons who do not want the case to be expedited. In a case in which both parties or any one of the parties want it to be decided soon, that case must be taken sooner.

Chairman.—*Q*. Don't you think that it goes perhaps a little too far? They may launch a case and they may not want to expedite because they may be afraid of each other. But, they cannot drag on for years. The consequence is some one of them dies, a legal representative has to be appointed and if he is a minor a guardian has to be appointed and a lot of interlocutory work is thrown upon the court which would not have arisen, if the suit had been speedily disposed of.

A. Of course that has to be taken into consideration.

Q. Don't you think generally speaking that in India the parties are not apt to mind the delay and that makes it necessary that they should be made to understand that they must behave in a business like way, in the beginning and there will be no trouble in the end?

A. I quite see that. But you cannot change the habits of the people. Notwithstanding stringent rules introduced from the introduction of the Civil Procedure Code, the habit has continued to be the same.

Q. Don't you think that the habits of the people might be changed if they are made to feel that the rules will never be allowed to remain a dead letter? Don't you think that already a change has been made in that way?

A. But in the case of distribution of justice it is quite a different matter altogether. I would not simply because of the delay of one party make him lose his whole source of income and so on.

Mr. Justice Stuart.—*Q*. Don't you agree with me from your long experience that those Judges who make the parties conduct their business with reasonable celerity administer justice and those who do not make the people behave in a business-like way so far from giving greater satisfaction give less?

A. My own idea is that the Judges can do a lot of improvement in this wise.

Q. There are and there have been Judges from whom the parties knew that they would not be able to get any number of adjournments as they liked and with such Judges especially they are very very diligent. Did you find that such Judges were worse Judges if they refused to give unnecessary adjournments?

A. That is a question which is very difficult to answer.

Chairman.—The only way when a man after fair warning refuses to be reasonably diligent, is to throw his case out or strike out the defence as the case may be, unless there are reasonable grounds for an adjournment.

A. What I meant to say is that in the disposal of cases preference should be given to the cases of those parties who want their case to be decided soon.

Mr. Justice Stuart.—*Q*. As far as I see there is no material delay in the courts in Bihar. The work is good, I think, in this province.

A. I should say so. I have no experience of other provinces; but still more than 20 years ago the cases were disposed of with more expedition.

Chairman.—*Q*. Why do the litigants take a number of cases to appeal? Is it that they might get justice only in High Courts?

A. Yes. That is the common opinion among the people.

Q. Would you mind to tell us from your experience, about the work of the junior pleader and whether it is true that a great deal of difficulty in the lower Court arises because the pleader is badly instructed?

A. Yes. That is so.

Q. Would you agree to the Registrar doing great deal of the execution work, if he had time?

A. Yes.

Q. Would you suggest to limit the right of second appeal in matters of execution?

A. There are varieties of cases. As regards value there should be no appeal at all. As regards description of property it might be taken under section 47.

Q. Would you agree that the right of appeal under section 47 would be with the special leave of the High Court?

A. That would not be proper. It is very difficult to lay down any hard and fast rule.

Dr. DeSouza.—*Q*.—In this connection, is the power of Order 41, Rule 11, with regard to execution also exercised in this province?

A. No.

Q. Would you be in favour of District Judges making a summary rejection?

A. I would make it a rule, that appeals should be disposed of in the course of a month or say two months.

Chairman.—Some of these appeals under Order 41, Rule 11, might be above that period. I question how is that to be determined?

A. By the facts which are very badly and imperfectly stated in the lower Court and on the decision of the lower Court.

Q. I do not think second appeals above Rs. 500 are tried by single Judges. They are tried by Division Bench.

A. Yes. Second appeal is the 3rd hearing of a small case.

Q. And don't you think that if the party is going to have an appeal to the High Court he should have one appeal at the High Court either to Division Bench or finally before a single Judge?

A. It is a question of interpretation of law and document. It can be left to the discretion of the parties to say whether they want to have a trial by a regular Bench.

Q. In fact all over India there is only a single Judge for this?

A. The right is given to the parties in the beginning for a Division Bench and at the end it is decided by a single Judge.

Q. What do you think about section 115? In your experience do you think that section 115 has produced a tremendous lot of bad law?

A. It is very difficult to say.

Q. Section 115 is generally applied to execution and miscellaneous cases as well as other proceedings. Is it not?

A. Ordinarily so.

Q. Do you think that applications for hanging up cases are made very late?

A. Yes. At present the application is given on Saturday and the court is moved to order on Monday. I have no idea of how it will be possible to order in three days in execution cases. But every application takes three months.

Q. Could it not be given in Monday week?

A. No. But one month will be quite sufficient.

Q. Do you think that it is right and reasonable to make the pleaders entirely responsible for the service of summons, etc., and for all the purposes up to judgment on behalf of his client?

A. In principle it is quite correct. The pleader is expected to be the representative of the party throughout all the stages of the case, even execution proceedings. But really it cannot be considered possible.

Q. As far as the preparation of cases is concerned, seeing what the witnesses have to say, and instructing the pleader is either left to the client or to the tout. The pleader does not do it. Don't you think it is rather bad and that the pleader who takes up a case ought to be made to do it? What right has he to take up a case without proper instructions?

A. That is the practice which has been going on.

Q. Is it not a very unprofessional and vicious practice?

A. This ought to be changed. There is no doubt about it and my idea is that pleaders should form themselves into partnership firms something in the nature of solicitors and in that way undertake cases. That will be far better.

Mr. Mohammad Hussain.—*Q.* You approve of the idea of having something like a solicitor's firm in each district?

A. Yes. I do approve. At the same time it would be a matter of costs too. That has to be taken into consideration. The ordinary poor client cannot afford to meet the expenses. But at the same time the charges must be regulated so as to be within the reach of every class of people.

Chairman.—*Q.* With regard to the pleaders who are coming to the Bar as youngsters, do you think that they have sufficient knowledge of practical law by passing through B. L. examination?

A. No.

Q. Would you be in favour of requiring a man, not as a condition of beginning the practice, but say in his first year or second year, to pass an examination in practical law—drafting pleadings, drafting interrogatories and things of that sort? Do you think that would do any good?

A. Well, that might.

Dr. DeSouza.—*Q.* Since the B. L. Degree is regarded throughout India as the only avenue for practice, would you be in favour of introducing these subjects in the curriculum of the B. L. Degree itself?

A. The thing is by introducing these subjects in the curriculum, that won't improve matters much; because these things are learnt more by actual practical training and by attending to the business than by mere reading. I would rather prefer pleaders to apprentice themselves with some practising senior in order to learn business. That would give them more opportunity for learning.

Chairman.—*Q.* In your experience do any number of young vakils do that to-day in your district?

A. I don't know.

Q. Now, as regards service of processes, you suggest that the serving peon might be required to have the service verified by the head member of the village panchayat or some other member. You think that that would be a great help in this province.

A. Yes. That will ensure some amount of certainty.

Q. Have you got a Panchayat in every village?

A. Yes.

Q. Is this an old Panchayat come from olden days or is it a recently organized institution and if so how?

A. That is under the statute. Some executive officer chooses the members of the Panchayat.

Q. Which Act is this?

A. Chaukidari Act.

Q. Is it the Union Boards Act?

A. Yes.

Dr. DeSouza.—*Q*. It is a very recent Act. Is it not?

A. I should say it is at least 30 years old.

Chairman.—*Q*. Is this Panchayat simply an arrangement in connection with the Chaukidari tax?

A. Yes. At the same time, they are to perform certain other duties also as per certain rules.

Dr. DeSouza.—*Q*. Has every village such a Panchayat, whether Zamindari or Government?

A. Not for every village, but for a group of villages.

Q. As regards service of processes, would you dispense with the presence of the identifier?

A. Yes. Identifier may be dispensed with. But the necessity for an identifier arises on a dispute when the defendant is to say that the summons are not served.

Q. Are the chowkidars all literate men?

A. They are not all literate men. All the members of the Panchayat are literate men and they will attest for the actual service of the summons.

Q. How can they do? All of them are in a single village.

A. Oh, yes. I don't think there will be any difficulty. The villages are very near within one or two miles.

Q. These Panchayats were created under what Act?

A. Under the Choukidari Act.

Mr. S. B. Dhavle, I.C.S., District Judge, Cuttack.

Written Statement.

1. Having regard to the habits and customs of the people in the districts of Cuttack, Puri and Balasore which are included in this Judgeship, I should consider the following periods as reasonably required for the disposal of the matters indicated:—

I. *Original Suits* (contested).

Subordinate Judge's Court:—

(*a*) Title, nine months.

(*b*) Money, six months.

(*c*) Small causes, two months.

Munsifs' Courts—Original Suits:—
- (*a*) Title, five months.
- (*b*) Money, four months.
- (*c*) Small causes, two months.

II. *Claim proceedings in execution.*

Subordinate Judge, six weeks.

Munsifs, six weeks.

2. Apart from the habits and customs of the parties, their dilatoriness, ignorance, poverty and failure to instruct pleaders properly and to keep them in funds, delays are frequently due to the following main causes:—

(*a*) The service of processes has to be effected through peons who have to find, if possible, 450 defendants and witnesses a year in Munsif suits (and 200 in higher suits), including a high proportion of people not often willing to accept service, *purdahnashin* women, illiterate men and minors.

(*b*) Pleadings are often badly drawn up, and when amendments occasionally become necessary, fresh notices have to be issued. and there is further delay.

(*c*) There is similar delay when parties have to be added, *e.g.*, Mitakshara minors, and legal representatives.

(*d*) The procedure regarding the appointment of guardians *ad litem* also causes delays.

(*e*) Adjournments are frequently obtained by parties in the hope of arriving at a compromise. The hopes are not seldom falsified, and finally the suits have to be heard. This is, however, really a question of the habits of people in these parts.

(*f*) Some of the delay seems to be inherent in the system. Cases have to be adjourned not *sine die* but to definite dates; and Courts have also to fix cases in such a way that on every working day they are sufficiently occupied. In several munsifis where frequent short adjournments are avoided by fixing long dates to enable parties to get ready, about four cases have to be put down for peremptory hearing each day. The number looks excessive; but what actually happens in practice is that on an average two to three of these cases break down from various causes: if parties do not say that they have compromised or propose to compromise the matter, they will plead illness or the absence of some material witness or something of that kind. The only two alternatives before the Court seem to be (1) to keep witnesses in attendance day after day until the case in which they appear can be taken up, or (2) to be prepared to find that on several days the Court has not enough work to do. The second of these alternatives has only to be mentioned to be dismissed; the first must not be pushed to an extreme. At the same time, when cases are put down for peremptory hearing on a certain day and are not all taken up on that day, an uncertainty is produced in the minds of the Bar and the litigants, and this in its turn leads to the parties putting forward all sorts of excuses when a case is reached unexpectedly early. I understand that where peremptory lists are prepared from weekly prospective lists, witnesses are liable to be sometimes kept in attendance for several days until their cases can be taken up: this system seems unthinkable in mofussil conditions, where witnesses have often to come large distances on foot. Please see, further, the answer to Questions 45 and 46 below.

(*g*) The procedure in execution is elaborate.

3. The outstanding cause of avoidable delays is unsatisfactory service of processes. Regarding peons, local agency may help in securing greater reliability, and Order 5, Rule 17, Civil Procedure Code, may then become effective. Mitakshara families and the delays inherent in the system, will I am afraid, continue for a long time. Some simplification regarding the appointment of guardians *ad litem* and regarding execution is possible and will help to reduce delays.

5. Some office training would be useful for Munsifs if they are to exercise effective control over their clerks and peons, and this has been recently introduced by the Patna High Court.

6. No.

7. Numerical standards have led to abuses. The ideal system would be where the inspecting officer is in close touch with the Courts to be inspected and this not merely theoretically but in actual fact.

8. The only place in this Judgeship where there is concentration of many Civil Courts is Cuttack itself. The concentration does entail as a consequence a certain amount of waiting for members of the legal profession, but against this delay must be set the advantage, both to the public and to the Courts, of a strong Bar.

9—11. Rent suits are not tried by the Civil Courts in this judgeship. Munsifs are now being vested with special powers to try suits to the value, not of Rs. 2,000 only but of Rs. 3,000 or Rs. 4,000 as well. Their Small Cause Court powers are also being enhanced in suitable cases.

12. The District Judge would be able to give more time to important work, if a senior Munsif was placed at his disposal not merely to help him in such administrative work as the management of his office and of the various departments in his charge, and the examination of the returns from Subordinate Courts and the taking of action on them under his orders, but also in such *quasi*-judicial or minor judicial matters as the passing of formal orders until cases are ready for hearing, and trying succession certificate, guardianship, intestate and insolvency proceedings, up to the value of, say, Rs. 4,000. The spare time of this senior Munsif could easily be employed in trying Small Cause Court suits up to the value of Rs. 250 and ordinary suits from anywhere within the judgeship up to the value of Rs. 4,000.

If Assistant Sessions Judges could in suitable cases be empowered (this cannot be done under the present Criminal Procedure Code) to hear the pettier criminal appeals, the District and Sessions Judge will also have more time for civil work.

13. So far as I can gather, the trial of Land Acquisition proceedings by Subordinate Judges or Munsifs will hardly be acceptable to the public. Uncontested Probate and Succession certificate cases could, however, well be disposed of by the senior Subordinate Judge and the senior Munsif at each place in the judgeship where such an officer is posted.

14. A Village Administration Act was passed in 1922 creating Courts of exclusive jurisdiction for petty criminal and civil cases in this province. These Courts have not yet begun to function in this judgeship.

15. On the whole I would leave Schedule II of the Provincial Small Cause Courts Act alone.

16. (*a*) I do not think that the summary procedure can be introduced in the Lower Courts, having regard to the habits and conditions of people in the mofussil and to the outstanding fact that legal help is not very readily available to them.

(*b*) Rent suits are tried by Revenue Courts only in these parts.

17. Sub-Registrars in these parts will hardly be able to try any classes of uncontested cases. They have not the necessary training and they have had much trouble of their own.

25. The remedy will be worse than the disease if the delays caused by the absence of defendants or their wilfully avoiding service are sought to be met

by extending the procedure under section 106 of the Transfer of Property Act to civil suits. I would resort more freely to substituted service, taking such steps at the same time as may be practicable to ensure that substituted service is not a sham.

26. Plaints are frequently very prolix. Drafting in the mofussil is only very slowly improving and is often done in actual practice by people of little or no standing who have rather vague notions of what to include and what to exclude.

27. It is not so much that the provisions of Orders VII and VIII are neglected as that the draftsman has no notion of precision. This does sometimes (but not very frequently) lead to delay.

28. The agency of post office for the service of notices and summonses has been frequently suggested as an alternative to that of nazarat peons. In this judgeship it is frequently tried in those cases where peons have attempted more than once to serve the party concerned in vain. We do actually succeed in obtaining effective service in the bulk of cases—to judge from the small percentage of cases in which applications for re-hearing are made and allowed: a rough calculation shows that in this judgeship the figure works out at about 2 per cent. of the suits decreed *ex parte*, or about ½ per cent. of the total number of suits disposed of, in the last three years. But this result is not obtained without an enormous amount of delay, and I would be in favour of trying any alternative that promises to save time. There is, however, no particular reason to think that postmen, once they come to know the nature of the work, will be more reliable than process-servers. As to village officials, there is a danger arising from the fact that factions are said to exist in village after village. The question was examined recently, and my conclusion was that process-servers might be directed to effect service, substituted or otherwise, in the presence of neighbours, one or two of whom should be paid suitable fees for proceeding to the nearest member of the village panchayat and swearing an affidavit of service. This system has not been tried anywhere, so far as I am aware; it may possibly bring about some improvement.

29. In a large number of cases, once a party has appeared through a pleader, the service of a notice on the pleader is generally regarded as good service on the party during the continuance of the proceedings; but pleaders frequently complain that they have not been able to communicate with their clients, nor do litigants seem to be in the habit of placing their entire case in the hands of their pleaders. A registered address, service at which should be deemed good service for all purposes of the suit and execution, would be a promising experiment.

30. If a process-server is required to report himself to the pleader of the party, the result in the majority of cases would merely be that the pleader would refer the peon to the house of the party. I am, therefore, not in favour of the suggestion.

31. Issues could be better framed if the Courts attended to the pleadings and heard the pleaders. This does not happen in practice, as pleadings are usually long and Courts pressed for time, and the result (in the way of saving time) is likely to be poor. I do not believe that on the whole there is any noticeable waste of time by reason of the way that issues are framed, though one does very occasionally come across an individual case where much time and expense might have been saved if the issues had been better framed.

32. Orders X, XI and XII, Civil Procedure Code, are generally neglected in this judgeship. The reason is not so much indolence as the fact that parties are not prepared to spend more money than they can help, before the case comes on for hearing, and the tendency of parties to admit nothing if they can help it. The mofussil Bar is also not used to the kind of work implied in the discovery and admission of documents and the making of appropriate affidavits. Time, I fear, is the only remedy.

33. I am not in favour of the examination of the parties, as part of the trial in the beginning before any witnesses are examined. The reason is

that evidence is so easily fabricated in the mofussil, thanks to the existence of agencies of which the Courts can take no cognizance. It is a matter of some notoriety that village touts, and other touts too abound in Orissa, and professional witnesses are not unknown.

34. We have a rule—Rule 1 at page 21 of the High Court General Rules and Circular Orders, Civil, Volume I, to enforce this provision of the law, though it only speaks of the *day* to which the case stands adjourned. Summonses are not usually issued again and again to witnesses. But where a party is inclined to be dilatory, delay can be and is sometimes caused by keeping a witness out of the way. The Courts have no adequate power to deal with this, the procedure about the punishment of wilfully absent witnesses being somewhat elaborate, and it being by no means certain that a witness who has been directed under Order 16, Rule 16, to attend at each hearing until the disposal of the suit can be fined without the proclamation required by Order 16, Rule 10.

35. On the whole, not much unnecessary and avoidable oral evidence is admitted in the Courts in these parts. The evil, so far as it exists, is in my opinion largely due to the incapacity of parties to instruct pleaders properly and to the ease with which witnesses can be tampered with. The only remedy that I can think of against the calling of several witnesses who ultimately prove nothing is unfortunately one that will only operate after the event, namely, the awarding of substantial costs.

36. Affidavits in these parts are generally drafted by pleaders' mohurrirs, and are often badly drafted. I do not think that much, if any, time will, in present conditions, be saved by affidavits being made the primary mode of proof in *ex parte* and non-appealable proceedings. Time could, however, be saved if the presiding officer were enabled to decide contested non-appealable cases on as much evidence as he considers necessary and no more.

37. It is difficult to see any lines on which Courts could fix time-limits for the examination of witnesses. A more practical remedy for avoiding delay on this account would perhaps be to require presiding officers to award adequate costs against the party wasting time in needless cross-examination. I have spoken of adequate costs, because our general rule for pleaders' fees is five per cent. up to Rs. 5,000. The rule is perfectly reasonable but in a suit of the value of Rs. 100 or Rs. 200, the fee allowable under it is too small to make much difference, and the other things included in the costs awarded are not such as to affect the result materially.

38. I do not think that the summary procedure of Order 37 is suitable for mofussil conditions. Please see the answer to Question 16 (*a*) above.

39. We do not get many representative suits in Orissa. Any rule that the father or manager in a joint Hindu family should be regarded as a representative of the family and that the family should be bound by the decision in a suit to which the father or manager was a party will presumably need to be qualified by an exception permitting other members to have the matter reopened in cases of fraud, collusion and the like; and this exception would in substance defeat the rule.

40. I am not in favour of throwing on legal representatives the duty to come forward, since so many legal representatives are young men or women who are not in a position to know what is being done.

41. I have not personally come across many cases where delay was caused by the necessity of filing successive petitions for the appointment of a guardian *ad litem* as each proposed guardian refused to act; but such delays are said to be far from rare. I see no great point in successive petitions, though with a larger number of people on whom notices have to be served, it may be expected that there will be some little delay in service—less, of course, than under the present system.

42 and 43. These evils are not noticeable in Orissa.

44. No. But cases of this kind are not very frequent.

45 and 46. Important dates are usuallly fixed by the presiding officers themselves. Pleaders are not, I believe, invariably consulted by all the Courts in fixing the time required for examination of witnesses and arguments, but the delay in disposal is really due to a much deeper cause. So many cases put down for peremptory hearing break down for one reason or another that officer after officer has found it necessary to put down more work for each day than he could possibly do that day, if it all required to be done. If the Courts were to put down a smaller number of cases, there is the danger of there being no ready work to do time after time. At the same time, the endeavour to ensure sufficient work by putting down a large number of peremptory cases reacts on the readiness of parties to proceed. Pleaders too are often more helpless in original than in higher Courts. It is by no means a rare occurrence for parties in Courts of first instance to go on fighting until one or the other is exhausted or finds himself in a very tight corner, and then only to come to terms. I have heard of instances where after the plaintiff's case had been closed and some witnesses for the defendant examined, the parties joined in asking the Court to stay the case for ten minutes or so in order to enable them to compromise the matter. The attempt to compel parties to proceed is easily countered by sending one of the witnesses away or pretending illness or something of that kind. The illness or other excuse is easily spoken to on affidavit, as it is not difficult in the mofussil to procure enough evidence in the majority of cases to prevent the affidavit from being held to be clearly false, if the Court should take it into its head to try to punish a party for filing a false affidavit. It seems to me that the delays are inherent in the system, unless witnesses who once come are to be kept in attendance day after day until their case is reached and taken up. We must endeavour to reduce them, but I cannot conceive any workable system in which there will be no delays and no great harassment to the witnesses.

47. No. Commissions to examine witnesses are generally issued to junior pleaders and it is not advisable to confer larger powers on them. Where there is a tendency to cause delay by the examination of witnesses on commission, I would be in favour of the proposal that the Court should, except by special leave, insist on written interrogatories.

48. I doubt it. Litigation in this kind of case is rather reckless, and adjournment costs will not much deter the man who causes deliberate delays in order to harass the other side. Affidavits are also somewhat easily filed in these parts, as already indicated. The Courts do insist on affidavits in bad cases, but with a view more to indicate what they think of the party to blame than in the hope of speeding up work. Delays due to carelessness are even now checked by ordering adjournment costs, especially where the other side asks for them.

49. We have a rule, No. 4 at pages 21-22 of the High Court General Rules and Circular Orders, Civil, Volume I, which requires suits to be tried *de die in diem*, and the rule is generally observed.

51. We have very few commercial suits in these parts.

52. Order 21, Rule 69 (2), provides for a fresh proclamation when a sale is adjourned for more than seven days. It will save the delay caused by a fresh proclamation if the limit of time is raised to one month. Objections under section 47, Civil Procedure Code, cannot be disposed of in a week, and if a sale can be adjourned to the regular sale-day for the following month without making a fresh proclamation necessary, the judgment-debtor will have no substantial grievance, it will be possible for the Court to dispose of the objection under section 47 in time, and there will be an incentive to the decree-holder to help in getting the objection so disposed of.

Courts may also be empowered at their discretion to demand security from judgment-debtors when they raise objections in execution.

53 and 54. I am in favour of these proposals.

55. The exclusion of a stranger purchaser from the scope of section 47 has the merit of leaving him unaffected by a subsequent reversal or modi-

fication of the sale under which he became the purchaser. This will be jeopardized if section 47 is extended, though, of course, the extension would render a separate suit (where one may lie at present) unnecessary. On the whole I am not in favour of modifying the section so as to include proceedings taken by a stranger purchaser.

56. Money decrees that cannot be realised in six years are hardly likely to be much advanced in later years. I am, therefore, in favour of curtailing the period for the execution of money decrees to six years, or, if the reduction is regarded in any quarters as too sudden, to some intermediate figure. The suggestions made in (*b*) and (*c*) are sound as far as they go, but I would prefer to make it unnecessary for the decree-holder to apply every three years or one year.

57. I am in favour of this proposal.

58. Post offices are perhaps not numerous enough in the mofussil to justify payments out of Court being confined to payments through that agency. Registered banks are even fewer, though not quite to the same extent as Sub-Registrars. As to the decree-holder's vakil, what happens often is that payments have to be made *on the spot* in response to the pressure of the decree-holders' men. The proposal will work hardship in the present conditions of Orissa.

59. I am in favour of the proposal in the first part of this question. As to the second proviso to Order 21, Rule 16, being deleted or modified, equities may exist between judgment-debtors which I would rather leave to suits between them. It is undesirable to complicate execution proceedings which I should regard as at an end when the decree-holder receives payment from any of the judgment-debtors.

60. The discretionary power given by Order 21, Rule 21, may be unnecessary in places where debtors are able to take care of themselves; but with a distinctly poor mofussil such as we have here, the power should not be done away with.

61. Order 21, Rule 22, may be deleted so far as a judgment-debtor on record is concerned.

62. Hardship will be caused if interim stays are not permitted in the case of maney decrees transferred for execution. But the Court to which such decrees are sent for execution may well be given greater discretion in the matter of the interim stay, and empowered to require security or impose conditions.

63. Notices at the different stages of execution proceedings are not very largely availed of by judgment-debtors in decrees of this kind. I see no objection to replacing them by a general notice to the judgment-debtor, at the beginning of the execution proceedings, to attend at all subsequent stages and watch his own interests. But a judgment-debtor should have notice of immovable properties that are intended to be brought to sale.

64. Yes; even where a judgment-debtor does not choose to appear, I think it is desirable that he should have this notice. Sale proclamations may be issued simultaneously with writs of attachment, the judgment-debtor being asked to appear within a certain time and make his objection, if any. In view of the way in which pleaders are engaged in the mofussil, I am against the proposal that notice of execution may be served on the judgment-debtor's pleader.

65. No.

66. The proposals contained in paragraphs (*a*) to (*c*) of this question will tend to complicate mortgage suits unless confined to puisne incumbrances. The proposal in paragraph (*d*) will not always be fair to prior incumbrancers. As to paragraph (*e*), time is given as a matter of form by the preliminary decree, but is not often made use of by mortgagors. Having regard to the nature of the relief obtained in a mortgage suit, I would not refuse to give the mortgagor any time at all but the maximum may be cut down from six

months to, say, three. No particular good seems to result from insisting on a final decree in simple mortgage suits, or a separate personal decree where the security has been exhausted. The preliminary decree itself may direct a sale of the mortgaged property in default of payment and also include a personal decree for the balance if any be found subsequently.

67. No; Appellate Courts can throw out unwarranted applications for stay of execution proceedings and award costs approximating to those actually incurred by the other side, where the other side appears.

68. I am in favour of this proposal.

69. It is not the fault of the Insolvency Act, but adjudications under the Act are delayed in effecting service of notices and sometimes by the state of the District Judge's file. There is generally little of assets to realise and little help forthcoming either from the insolvent or from his creditors; the available receivers have also neither time nor capacity for a speedy realisation of the assets and distribution of dividends. I am not against the devolution of insolvency jurisdiction to Subordinate Judges or even to senior Munsifs, but I do not think that such devolution will make much difference, having regard to the machinery available to these Courts for disposing of insolvency proceedings.

70. No.

72. It is not necessary to retain the provision compelling the mortgagee to call an attesting witness to the mortgage. But the onus of proving the transaction should not be shifted from the plaintiff. So many of the mortgagors in the mofussil are poor and ignorant and easily imposed upon that registration is not always a sufficient guarantee of intelligent execution.

73. Yes. In the present state of things, the delay caused by parties having to produce certified copies is not noticeable; more delay (in my experience) is caused when original records and papers have to be called for.

76. The exemption from registration in respect of property worth less than Rs. 100 is not confined to partition-deeds, and I am not aware that non-registration in respect of property worth less than that limit has led to much mischief.

77. There are not many cases of this kind in these parts.

78. I agree.

79. I do not think that the proposed rule will work well in mofussil conditions. Registration is not an unmixed blessing to poor people in the mofussil and the complaint still persists that every time such people have to go to a registry, they are subjected to various exactions by various people.

80. I am not prepared to accept the general proposition. Finger prints are, even in practice, more decisive than signatures.

81. Pleas are often put forward that documents, though registered, were executed because of threatened executions by creditors; these I would disallow.

82. Act IX of 1922 has not been long in operation, and I have had no experience of its working; but the compensatory costs it allows would seem to be a more suitable remedy to extend to frivolous suits than the enhancing of court fees.

83. No. No.

86. Time is sometimes wasted by the citation of cases from the unofficial law reports, as much search has to be made to meet them. But official reports do not always compare favourably with unofficial reports in various respects, and the Indian Law Reports Act, 1875, has become a dead letter. Something like a Council of Law Reporting attached to each High Court, with the privilege that reports issued by it or with its approval are alone to be recognised in the Courts, will, I think, bring about an improvement.

87. No.

Mr. S. B. DHALVE, I.C.S., District Judge, Cuttack, called and examined on Monday, the 30th June 1924.

Chairman.—*Q*. You are the District Judge of Cuttack?

A. Yes.

Q. As regards process-serving is there any delay in your district?

A. There are considerable delays, and the results are not satisfactory. A first process is sent out. I find it is not served properly, a second one is issued. It also meets with the same result. Then a registered postcard is to be sent. On the whole it takes two months for the process to be served.

Q. Is there two months delay commonly in the service?

A. Yes. That is quite common.

Q. Now, what is the reason for the process not being served in the first time?

A. One of the reasons, I can say is, that the peon has to serve 400 processes a year.

Mr. Justice Stuart.—*Q*. How many?

A. 400.

Chairman.—*Q*. Is that a rule?

A. Yes. That is a rule. The figure was 390 till year before last and 450 now, and it is really difficult for the peon to serve them. Now the peon may be going to the village at 9 o'clock. The cultivator will not be at home and will be out in the fields. Will the peon wait. No. It is returned stating that the judgment-debtor is not found. Attempt is made by posting on judgment-debtor's door. When the return is made to the Munsif, another process is issued and it is also with the same result. Another peon is sent to effect service, that also with, more or less, the same result.

Mr. Justice Stuart.—*Q*. What is your identifier doing all this time?

A. He is suposed to go with the peon every time. But I don't think, it is being done. The peon is not really at the disposal of the identifier nor does he accompany him, but says,—you show me the place, and I will go and serve the notice.

Q. Do you know that in Lahore process-servers are obliged to serve 75 per cent. of the processes personally?

A. We have got a similar rule. But there is no definite rule that 75 per cent. of the service would be effected by that time.

Chairman.—*Q*. Is there a list kept to note the number of services that had been effected in a month?

A. There is.

Q. You know how many given to him for service have been served and how many not served giving some reason or other?

A. Yes. They are put up to the Munsif in a consolidated statement.

Q. How is the peon dealt with by the Munsif?

A. If the percentage is low the peon will probably be warned, if it is the same next time, he will be fined, and if still it continues to be so low the peon will probably be severely punished.

Q. Do these figures go to the District Judge?

A. Only in exceptionally bad cases.

Q. Is there any prescribed form with the Munsif for this purpose, and is it regularly used?

A. Yes. In many of these cases the peon is serving the processes of not only a particular Munsif but of many other Courts also. The peon gets such proceedings that may belong to the Court of the first Munsif, a Subordinate Judge and so on.

Mr. Mohammad Hussain.—*Q.* May I put a question whether the service of a prescribed number of processes is to be effected in one month?

A. No. It applies to one year—450 processes—200 Subordinate Judge's and District Judge's.

Chairman.—*Q.* What about attachment?

A. They will be included in the 200 class. In the headquarters where the peon serves processes for different Courts, he will submit his return to the judicial officer in charge of the nazarat for check.

Q. Do you check them?

A. Yes. I used to do it myself.

Q. Will the Subordinate Judges check it?

A. Yes. They will check it and punish the peon.

Dr. DeSouza.—*Q.* The Munsif and the Subordinate Judges are invested with powers to punish. If the punishment is not considered sufficient, will the matter be reported to the District Judge in case of very bad work?

A. Punishment on defaulting process-servers is imposed by the officer in charge of the central nazarat, not actually by the District Judge but by the officer in charge.

Q. What method would you suggest to check it?

A. I don't think it possible in the circumstances—and am by no means confident. I will only put up as a suggestion for what it is worth. We have Behar and Orissa Village Administration Act, 1922, and under that Act we could form Union Boards for small areas. The area should not be less than 5 miles—it may be 10 miles. The peon will take the processes to the locality. He will take two neighbours and effect service in the presence of these people and go to the nearest member of the panchayat and swear before him that service has been effected. That I think could be done.

Q. Do you think that would be satisfactory?

A. I think it might work. Because these members of the panchayat generally know quite well what sort of people they are as the members are leading local people. But the difficulty is that there are party factions in almost every village. If however you make it a point that these members should go to the nearest panchayat certainly they would go and the service would be effected.

Q. You would like to have the service effected before the panchayat. But will the defendant move from his house at all?

A. These two neighbours would go before the peon and say that a process is to be served on him. If it could not be served on him then the process may be posted on the door so that service under Order XVII, Rule 17, may be effected.

Q. Do you think that the neighbours would be willing to accompany the peon?

A. It is not a long journey. It is only 2 or 3 miles and he has a *bhatta* of annas 12 to go with him and have the process served. I think there will be no difficulty.

Mr. Justice Stuart.—Do you not think that the difficulty could be met by better supervision?

A. As to supervision, I don't know that anything very much is practicable. I have a nazir who is supposed to do local verification of the service of processes. He has got too large an area.

Q. Well, that is a point. Is it not a fact that he has too much to do? Don't you think it would be better and economical to improve the supervising staff all over India? All over India, the supervising staff of process-servers is very poor.

A. Yes. That is so. It would mean money.

Q. After all I take it that in Bihar as in most other provinces of India, the income from process-serving very largely exceeds the expenditure.

A. I believe so.

Q. Don't you think the solution is very simple, *i.e.*, better supervision?

A. You have got under-paid men and practically there is no supervision. If you want reliable supervision, I think the cost will be somewhat higher. I should not care to have anybody under the standing of an official who costs Rs. 150 to Rs. 250 a month.

Q. We have got a rough idea that it will be possible to introduce the Registrar system in Courts. It would relieve the Judges of a very large portion of their work so that the Judges could devote that time to their own work.

A. If an officer of that kind is provided I don't know whether he would be able to go out to the mofussil.

Q. It is quite sufficient if he inspects the processes after the process-server returns to the Court. In some districts the presiding officers have time to look into the process-serving work, by checking the returns. Suppose the peon comes back and says " I went to the man's house. I could not find him there and there was no male in his house and I affixed a copy of the notice." The first question that you should put to him is " why did you not go and look for him in the fields? Go back, try to find him out and then come here."

A. The peon would probably start making some other kind of excuse.

Q. But in a short time he can have the peons well in hand and make them do their work properly.

A. Yes.

Dr. DeSouza.—*Q*. Can you give us an idea of the system of supervision by local verification? What is the nature of the work and the results of its activities?

A. I have got two heads of ministerial staff. One is the sheristadar and the other, the nazir. The sheristadar has nothing to do with the process department. Whenever there is time I direct the nazir to go out to the mofussil and locally check the service of a certain number of processes. He goes to the various Courts and finds out whether processes have been served in the last 6 months in those directions. He takes a certain number of processes in that way. When he goes to the mofussil he goes to these places. On the back of the process you will find written that the process was served in the presence of such and such people. The nazir gets hold of those people, takes down their depositions in brief and comes to a conclusion as to whether the peon did really go there and whether what he has written is or is not true. In 4 days' time he might be able to check 25 processes.

Q. Those will be processes served long previously.

A. It may be 3 months or 6 months or even a year. I regret to say that I am not able to spare him as often as I would like.

Q. What has been the result of such inspection?

A. I have come across only 2 cases, where I had to dismiss them.

Q. What did you find?

A. That the peon had not really gone there at all.

Q. You discovered that he had not gone from the evidence collected by the nazir.

A. Yes. I also wanted an explanation from the peon and asked him if he wanted to give any further evidence. I was not satisfied with his explanation and I dismissed him.

Q. How often had you been able to spare your nazir in this way?

A. I spared him on 4 occasions in the last year, about 10 days in the whole year.

Q. Naturally you were not able to spare your nazir from headquarters for this sort of work frequently; for, obviously his duties are too onerous.

A. Yes. I would like to send him more often, which I cannot do.

Q. Is Cuttack the only district where this system is working?

A. In every district in which I worked, I believe this system prevailed.

Q. You said that it was necessary to employ a Sub-Deputy Collector on a pay of Rs. 100 to Rs. 250.

A. The nazir gets the same pay.

Q. Instead of this local checking so spasmodic and so inadequate, if there was a regular system of checking by means of surprise visits on certain beats of the bailiffs and catching hold of their diaries and seeing whether in the village just left the service is good, would it not be a better system?

A. It will be a good system; but the conditions of touring in this province are different from those in other provinces.

Q. But all the same the processes have to be served.

A. Yes. But you won't find any touring officer here who tours for 5 months together. The officer you suggest will have to be touring throughout the year.

Q. You say that the results of the system of local verification are very satisfactory.

A. They don't go very far; but we do get evidence.

Q. What class of officer would you require for this kind of checking by local verification?

A. He ought to get the maximum pay that any ministerial officer in the Civil Court gets. It is roughly Rs. 150 to Rs. 200. That would practically mean the same thing as a Sub-Deputy Collector.

Chairman.—*Q.* Then how many of such people do you want?

A. I require one man for every district.

Dr. DeSouza.—You said your rules require as much as 75 per cent. of personal service and if it falls short of that you will fine the process-server.

A. Yes.

Q. You also said the peon never bothers whether the defendant is at home but generally affixes the process at the front door of his house.

A. That is often done, I believe.

Mr. Justice Stuart.—*Q.* I do not understand the difficulty. When a peon goes down to a village he will find a certain number of people working there in the fields. He is in a position to enquire from somebody " Where is the man's house?" and then " Is he in the village or not?" The peon is in a position to be told that he left for Calcutta 12 months ago. Why does not the peon report that?

A. In that case the peon does report that.

Q. If he is in the village, the next thing for the peon to ask is " If he is not at home, where is he?" I cannot understand why these things are not done in an intelligent fashion. That is what a private messenger would obviously do—if he were sent with a letter. A barber goes to a village, where he has never been before, with an invitation to a wedding. He has not the slightest difficulty, in delivering the letter. The Court peon is supposed to be blind and he is incapable of doing anything himself. He must have an identifier to hold his hand whereas we find that when a *nai* woman goes to find a woman in another village she does not have the slightest difficulty.

A. In the case of invitation taken by a barber personal service is not insisted on. Even if he delivers the letter to the family that is quite sufficient.

Q. But does he not usually deliver it to the man concerned because he wants his four annas?

A. Invitations are left at my house and my wife receives them.

Q. You are not a villager. I am talking of a villager, that is a different matter.

Mr. Mohammad Hussain.—I think a particular man may not be present. The family will be enough for the purpose of delivering a private invitation.

A. Yes.

Mr. Justice Stuart.—You can serve an adult male member of a family.

No reply.

Dr. DeSouza.—A man does not want personal service in a wedding.

A. I was going to suggest that.

Q. You say that after the first failure or the second failure to effect service you generally resort to sending a registered postcard with acknowledgment due?

A. Yes, we receive acknowledgments but they are very often not signed by the person for whom the notice was meant.

Q. Who signs it?

A. Somebody else. I looked at some of the acknowledgments and there was really nothing to show that the defendant had really been served.

Q. But you found that the defendant turned up on the fixed date?

A. After the issues were framed and in some cases—one or two—he turned up before the issues were framed.

Chairman.—*Q.* If he did not turn up why were the issues framed at all? Why was not the case decreed *ex parte*?

A. This did not strike me at the time.

Dr. DeSouza.—*Q.* How would you like the suggestion that has been made to us in other provinces that on failure to effect personal service, the Judge should pass an order for substituted service and also that a registered letter, with acknowledgment due, should be sent to him. It was suggested that you would find that the man would invariably turn up on the second day.

A. This system would be quicker.

Q. It was suggested to us in the United Provinces by Mr. Justice Mukerjee. Do you think that that would work in Orissa?

A. That will probably work very well in Orissa.

Chairman.—*Q.* Let us go to another point. I see that it has been suggested that the stranger auction purchaser might be included within the scope of section 47. You say that the exclusion of a stranger purchaser from the scope of section 47 has the merit of leaving him unaffected by the subsequent reversal or modification of the decree in consequence of which he became a purchaser. This will be jeopardised if section 47 is extended though, of course, the extension would render a separate suit unnecessary. Would you just explain what the point there is?

A. I believe there are cases where a stranger has purchased a property in execution of a decree and sale is attacked under Order 21, Rule 90, and in good many cases successfully attacked because valuation in sale was not adequate. Once the property has gone to a stranger it cannot be got back but there are other remedies.

Q. That is, when a sale is set aside under Order 21, Rule 90, that setting aside does not affect the auction purchaser?

A. If the decree-holder is the auction purchaser and the sale is set aside the property will come back, but this rule does not apply if the purchaser happens to be a stranger.

Q. I appreciate that. But if there is any irregularity in sale, although the auction purchaser knows nothing about it, it would not be usually set aside?

A. I say that the purchaser knows nothing in that case fraud has been held and he was not to blame.

Q. But are those cases of fraud altogether rare?

A. They are exceptions.

Q. Those are cases where the whole thing is fraudulent. There is nothing wrong with the sale as sale but there is something wrong in the suit. If you have simply a case under Order 21, Rule 90, and the sale is set aside it is set aside against everybody?

A. That is so.

Q. Is that the class of cases you are thinking of under section 47?

A. Yes. There is a typing mistake in the written statement. For "subsequent reversal or modification of the decree in consequence of which he becomes a purchaser," there should be "subsequent reversal or modification of the sale . . . ."

Q. Now as regards payments out of Court. I think you say that in your part if you make a rule that no payments will be recognised even within three months unless they were made through a bank or a vakil, it would work hardship because payments have to be made on the spot under the pressure of the decree-holder's man and people will pay in that way and they are asked to pay again.

A. Yes. I have recently come across a very curious case and I consulted the members of the Bar and my judicial officers in the matter. There was a money decree passed in February 1923. First application in execution in April was dismissed as infructuous, the peon reporting that the identifier would not identify any property. The second execution was applied for in June and it was also infructuous. The third execution was applied for in July again which was also dismissed as infructuous. In September there was full satisfaction. I went through the record and I put that as a concrete proposition to several people. They thought that what must have happened was that the judgment-debtor had obtained time by paying Rs. 5 or so to the decree-holder's man on the spot. This is a kind of thing that happens very often.

Mr. Justice Stuart.—*Q*. The pleader files a written statement, then an application is made for a document. Is it not enough if the notice is simply served on the pleader?

A. As a rule it may be served on the pleader. As a matter of fact the pleaders refuse to accept on behalf of their client. It is generally done in many cases.

Q. Theoretically the pleaders are engaged for particular work, they file written statement, and apply for time. But do they represent the party till they complete that work?

A. Pleaders represent the party. The party never turns up to them nor gives them any instructions. Time after time they say "I received no instructions." The difficulty, in my judgeship is, that pleaders are not kept informed by the parties. The pleaders are first paid, say, Rs. 60, for filing a written statement. The client goes away. The pleaders say "I received no instructions." If the client turns up in the meanwhile, he says "I am sorry I have not instructed my vakil." Except when the litigant is interested in his case it is not possible to make the pleader responsible for his client.

Mr. Mohammad Hussain.—*Q*. There has been some suggestion that in disposing of execution cases a notice may be served upon the pleader. How do you like the idea?

A. I am against it.

Sir T. Desikachari.—*Q*. Do you think that there will be some difficulty if different pleaders are employed in the course of the suit?

A. Yes. That is so.

Q. Suppose only one has been appointed will it hold good for execution also?

A. Of course. It does.

Q. What I want to know is whether it is not possible to recommend the appointment of a pleader for the purpose of execution as well as in a large majority of cases—Nattukottai Chettis and other big landholders and other people do employ the same pleaders.

A. I can only speak of Orissa.

Chairman.—*Q*. Once a notice is served for execution, would it take effect for proclamation?

A. I only suggested that the judgment-debtor would be informed that his property would be brought to sale. Then it is his duty to pay attention to it. So when once he gets one notice I should consider that to be sufficient.

Sir T. Desikachari.—*Q*. Do you think that the suggestions in Questions 63 and 64 are good suggestions?

A. Yes. I have expressed my agreement with the suggestions contained in those questions.

Chairman.—*Q*. Have you civil appeals in your judgeship that are difficult to cope with?

A. Yes, very badly.

Q. What in your opinion is the best way of managing civil appeals? I take it that you yourself can do the civil appeals?

A. Yes, if I am not overwhelmed with criminal work I daily deal with them. My Munsifs have been empowered to hear rent suits. These suits involve questions of law or are of the value of more than Rs. 100 and they are all appealable to the District Judge. I have to cope with them. I keep all miscellaneous appeals. I have also got original jurisdiction. That is the position. The Sub-Judge's appeals cannot be transferred.

Q. You can't expect to deal with Munsif's appeals.

A. No.

Q. What happens? Do you transfer them practically to Sub-Judges?

A. Yes. Sometimes, the High Court sends an Additional Judge.

Q. As regards the Munsif's appeals do you transfer them immediately or after they have been in your file for some time?

A. They are not transferred the moment they are filed. As a matter of fact service is effected and then after a certain interval of time they are brought into what is called the peremptory list. When there is just a chance of its being heard the Sub-Judge wants work or there is an additional Sub-Judge. Then, I transfer some 50 appeals.

Q. How long does it take from the time that an appeal is filed to get it disposed of by one of the Sub-Judges?

A. That depends upon how many days a year the District Judge functions. If he functions for a very few days, practically he has heard no appeal at all and it will be only 50 appeals transferred to the regular Sub-Judge to do in the intervals of original work.

Q. How much are you in arrears now?

A. I am fairly badly in arrears now. I have got work which could be done only by the District Judge.

Q. Supposing somebody files an appeal from the decision of a Munsif to-day, how long will it take for decision?

A. He is lucky if he gets a decision within 18 months.

Q. Is one year quite an ordinary time for a first appeal taking the ordinary pendency for the last few years?

A. Yes. That certainly would not be excessive.

Mr. Justice Stuart.—*Q*. How many days did you spend last year in criminal work?

A. I spent roughly 180 days.

Q. What is the average number of working days in a year?

A. 240 to 250.

Q. 180 days went in criminal work.

A. Yes.

Q. Then you want a certain number of days for miscellaneous work.

A. Half the time was taken by civil work.

Q. You really had no more than 30 or 40 days for civil appeals.

A. Yes. It all depends on the criminal work.

Q. Have you a Jury?

A. In Cuttack only.

Q. What is your experience? How long does it take in a Jury case?

A. A good deal depends upon the counsel engaged in the case.

Q. Is it a fair idea that it would take double the time to hear a case from a Jury than from assessors?

A. It will be at least 50 per cent. more.

Q. That in your opinion is further holding back the work of the Civil Courts. Every year more and more time is taken up in criminal work and the Judge has less time to devote to his civil duties. I suppose you could not find time to do that at all.

A. Yes, that is so.

Q. Can you get any inspections done?

A. I spend about 10 days in a year.

Q. Every day you inspect a Court a certain number of civil appeals will have to wait. There is too much put on the District Judge's shoulders and he cannot do everything. His first call is on the criminal work.

A. Yes.

Mr. Mohammad Hussain.—*Q*. You have had no additional District Judge for Cuttack for some years?

A. Yes.

Q. You will agree with me that there are some districts where the work is congested and where there is often need of additional District Judges.

A. It is not always congested. It depends only on the criminal work. I shall be doing nothing but sessions work partly at Balasore and partly at Puri.

Q. Have you no Sub-Judge with the powers of an Assistant Sessions Judge?

A. I have one. He has got his own file to attend to.

Mr. Justice Stuart.—In your experience the work gets into arrear year by year.

A. In Cuttack, certainly.

Sir T. Desikachari.—*Q*. I wish to ask you as to whether any relief could be given to the District Judge by transferring some of his powers in the succession cases, guardianship cases and insolvency cases to the Sub-Judge. What is the amount of time generally taken by guardianship cases?

A. One set of guardianship cases took 10 days. But that is exceptional.

Q. How many days do the Succession and Probate cases take?

A. 10 days.

Q. Have you had any insolvency cases last year?

A. The insolvency cases generally do not take long, particularly at the adjudication stage. I have got no receiver and whenever necessary I have to appoint a nazir as receiver. I do not remember a single instance in which we have realised anything.

Q. Have you had any succession cases, cases under the Indian Succession Act?

A. I have not had succession cases but I have had probate cases.

Q. What do you think to be the normal amount of time taken by these cases—probate cases, guardianship cases, etc.

A. It will rather depend upon the institutions. My impression is that in my judgeship the number of such cases that come up in a year is 10 or 15 and probably they occupy about 30 days of the District Judge's time.

Q. Do you not think that substantial relief would be given to the District Judge if these cases were tried by the Subordinate Judge?

A. It would.

Q. And it would enable him to devote more time to civil appeals and important original suits?

A. Yes, undoubtedly.

Q. Undoubtedly it would give him another 30 days?

A. Yes, 30 days or if I say 20 to 30 days I would be more near the mark.

Q. With regard to the Village Administration Act, has that Act been put into force in any District?

A. I believe the intention is to apply that to some of the districts of Bihar as soon as possible and then in Orissa not before long. A certain amount of preliminary work has to be got through.

Q. Have you read Chapter V of the Act?

A. I had something to do with the drafting of the Act.

Q. You think that Chapter V if worked properly would take away a large number of petty suits from the ordinary stipendiary Munsifs?

A. I think so.

Q. Would that take away nearly one-third of the total number of suits?

A. I cannot commit myself to any figures off hand.

Mr. Mohammad Husain.—*Q*. Is it not a fact that the Act will be introduced in selected areas only; it is a sort of an experiment?

A. Yes. At present it has not been introduced; when it is introduced it will be a sort of an experiment.

Sir T. Desikachari.—In Chapter V there is a reference to trial by aboriginal panchayats?

A. I have not looked into details recently.

Q. I see that the total number of suits under Rs. 50 in this province, forms much more than 50 per cent. of the total litigation. Do you think that if these panchayats could be entrusted with suits below Rs. 50 in value more than 50 per cent. of the total litigation could be dealt with by village panchayats?

A. It all depends upon the way in which the panchayat will work. There may be a tendency at work in the opposite direction.

Q. I suppose in Chota Nagpur there are aboriginal panchayats doing work?

A. We had no panchayat there, but it has been working in Cuttack which is in Orissa.

Q. Is it a fact that these aboriginal panchayats deal also with succession cases?

A. I have attended meetings of these panchayats but matters like succession, etc., do not come up before them.

Q. What is the distance that ordinarily has to be traversed by litigants in order to have their cases tried in the nearest Munsif's Court?

A. We have got canals in Orissa and one of my Munsifs is at a distance of 40 miles. The actual travelling is done either on foot or by canal.

Q. You mean to say that the average distance is 40 miles?

A. I am saying that one of my Munsifs is located at a distance of 40 miles from the railway station. I should say that an average distance travelled by a party is 20 miles. It is very very roughly. It may be a little less.

Q. You have a number of outlying munsifis in your district?

A. Yes, I have.

Q. And Munsifs there have their own deputy nazirs?

A. Yes.

Q. And it is only at the headquarters that you have a central nazarat?

A. That is so.

Q. How does the service of a process in a Munsif's Court compare with the service made through the agency of the central nazarat?

A. It is much the same.

Q. There is no difference between the results achieved through the employment of a deputy nazir and through the employment of a central nazarat?

A. Very little difference.

Dr. DeSouza.—*Q*. Are there any complaints from Munsifs that their reports are not sufficiently attended to by the Judge in charge?

A. I am in personal touch with my Munsifs and I do not think that there are any complaints. They have never been brought to my notice.

Sir T. Desikachari.—There is one other matter relating to district, namely the mofussil Bar. Are there any first grade pleaders or second grade pleaders?

A. We have no distinction on this line. We have High Court vakils and District Court pleaders.

Q. What are qualifications of a District Court pleader?

A. They may be graduates in law of a University or they may have passed pleadership examination.

Q. Those who have passed an examination without any further apprenticeship become District Court pleaders?

A. Yes.

Q. How is the Bar in the Munsifs' Courts and the District Court, is it crowded?

A. Yes, particularly at my headquarters.

Q. Do you think that it is advisable to have a sort of training after a young man passes his University examination?

A. If training can be provided it is good. It will, however, increase the cost of education.

Q. But can it be insisted on?

A. The pleader's fee will be increased. At the present moment there is competition between pleaders and a large number of mukhtiars and touts and good many parties are ruined. It is not advisable to take any steps, at the present moment, which will increase the fees of the members of the Bar.

Q. As regards the members of the legal profession, is there any system whereby junior pleaders are attached to the senior pleaders in this district?

A. There is no definite system.

Q. Is there any complaint in your district that young men starting in the profession learn their work at the expenditure of the litigant?

A. I don't think it is true.

Mr. Mohammad Husain.—*Q*. Do you think practical examination is required before they actually enter the Bar.

A. I don't think so.

Sir T. Desikachari.—*Q*. With regard to the Civil Procedure Code, drawing up of plaint, use of sections relating to inspection, discovery and interrogatories, don't you think that a preliminary training would improve the members of the Bar?

A. No. It is really difficult.

Q. Touts I suppose are helping the members of the Bar?

A. The Bar in a body are against touts.

Mr. Justice Stuart.—*Q*. Do you mean to say that the minority of the members of the Bar employ touts and the majority do not approve of it?

A. Actually they are not employed by anybody at all. They catch hold of the villager in the railway station itself, and say that they would take him to an eminent vakil and do everything for him. The tout prepares a written statement for him, gets some money and goes away. The villager takes the written statement to the pleader and asks him to file the statement. When they question the client as to who prepared the statement, they say nothing, but ask the pleader "will you please file the statement or not?" Some of them do it for Rs. 2. It is a pity.

Sir T. Desikachari.—*Q*. Don't you think that the touts fix the fees for the pleader and get 4 annas in the rupee?

A. I don't think so.

Q. Do you think that these touts could be eliminated altogether by training the young pleader?

A. If you do that naturally the pleader would have to get higher fees. A large number of young practitioners are not in a position to understand how to draw up petitions or how to follow rules of proceedings.

Dr. DeSouza.—*Q*. Have you any idea of the system of probation to the Munsifs?

A. At present, he is asked to take notes of cases and to write short proceedings. The Subordinate Judge will look into them. He will look to all work. I shall ask him to sit with me and take down notes. I will see them.

Q. Do you think that he can be trained in all the different branches in six months?

A. The training is for 2 years. I should say a year and a half will be a fit time for trying cases and for the management of the Court.

Q. How do you examine the accounts? Do you examine them in detail as in some provinces?

A. I am not in charge of the accounts.

Mr. Justice Stuart.—You go to Court at half past ten.

A. Yes.

Q. When do you hope to take your seat in the Bench?

A. I could not take my seat before half past eleven.

Q. You rise usually at 4.

A. At half past four.

Q. Half past ten to half past four comes to 6 hours. You take half an hour for lunch.

A. Yes.

Q. Out of the 5½ hours available 1½ hours go to office work and 4 hours go to judicial work.

A. There is something else to be taken into account. I never read the records or write the judgment during Court hours. The public are getting 3 hours of my time at no cost.

Q. Then you would be strongly in favour of any proposal to give you an assistant—a Registrar, who would take a lot of this work off your hands to enable you to do the judicial duties.

A. Yes.

Mr. R. STUART KING, Circle Manager, Darbhanga Raj, Muzaffarpur.

Written Statement.

1. A. (*a*) Title suits, 6 months.

(*b*) Money suits, 4 to 6 months.

(*c*) Rent suits, 3 months (contested 6 months).

(*d*) Other suits, 2 months.

B. (1) In Munsifs Courts, 2 to 3 months.

2. Yes. Causes of delay (*a*) slack and inefficient under paid process-serving accentuated by parties bribing the process-servers.

(*b*) Want of time of Munsifs to supervise.

(*c*) Delay in calling for and procuring records from Judge's and Collectorate record-rooms. (Remedies suggested in answer to subsequent questions).

3. (*a*) Speedier and more effective service of processes on defendants pleaders, *vide* answer to Question 25.

(*b*) Giving fewer adjournments.

(*c*) Modifying rule of evidence to accept certified copies of records.

(*d*) Relieving Munsifs of petty suits (*vide* answer to Question 9).

6. Not to any serious extent in lower courts.

8. Sometimes.

9. Yes. In addition to the Munsif there should be a junior officer (who might be called Deputy Munsif or Sub-Munsif) to try all *ex parte* claims and all contested claims up to Rs. 100, the Munsifs being given jurisdiction up to Rs. 2,000.

10. Yes, see above. The Small Cause Court limit to be from Rs. 100 to Rs. 250.

Exclusive Jurisdiction.

14. Yes. I have no experience of these tribunals, but would say—yes, for the class of cases provided for in the Union Boards.

16. Yes, (*a*) To Munsifs in suits up to Rs. 100 (to be appealable).

(*b*) Yes, in cases of previous decrees (not on registered Kabuliats).

17. No, Sub-Registrars have not the confidence of the public.

18. The present right to appeal should not be curtailed.

21. Yes. Before second appeal is allowed the decretal amount should be deposited.

25. The evil is unlimited.

Vakil should not be allowed to accept a Vakalatnama without entering the postal address of his client thereon. All processes should be served on client's Vakil—a copy being sent also to client by registered post.

29. Yes, see answer to Question 25.

30. Yes, the process-server should report himself to the party on whose behalf the notice is issued or to his authorized agent.

This is practically what I have been directing the Raj—Pleaders to arrange for " sub rosa " all along—the inducement to the process-server being that he gets a diet allowance from me if he complies and duly brings certificate of one local agent at the village, that the process has been duly served.

(I know from Government officials who have had charge of Government khas mahalls that a like gratuity has to be given by them to ensure proper service.)

If this is made a Court rule as suggested it will make for efficiency and check corruption.

33. Certainly. This should be done. This would result in saving of time and expense and should be made a rule in all contested suits.

To obviate calling of unnecessary witnesses, it should be made obligatory on the parties to give the points on which the witnesses are to depose before summoning them.

Though, in some complicated cases the Munsif may not have time to eliminate much unnecessary evidence—yet in most cases it will cause a good effect.

34. At the first appearance of the witnesses they may be bound down to attend on all subsequent occasions as in the Criminal Courts (in which latter case no expenses are paid to them).

35. See answer to Question No. 33.

36. Affidavits in Munsif's Courts are not such as should be given much weight to being generally hastily ill-drawn and not carefully considered and drawn up and sworn to by responsible persons as in the High Courts. Such a procedure would facilitate pressing false claims.

37. A time-limit would not be advisable and would be liable to be arbitrarily and irregularly applied, causing injustice and frequent appeals.

46. No grievance reported by pleaders.

47. No.

48. (*a*) No.

(*b*) The amount of costs allowable under the rules is not sufficient to prevent frivolous applications for adjournment. The costs allowable might be doubled.

49. Not as much as they should be. Parties are put to enormous expense in examination of witnesses and pleaders owing to this.

53. The extension will not expedite the proceedings but should improve justice.

58. The proposed alteration may be made to take effect in all save rent suits, but the advantage is doubtful.

60. There appears to be no objection.

63. One notice should suffice. This is one of the most useful and practical suggestions in the questionnaire.

64. Yes. The judgment-debtor should be served with a copy of sale proclamation by registered post, and the writ of attachment and sale proclamations should be issued simultaneously. But I would also retain the service by beat of drum in the village to ensure as much publicity as possible.

(B) Rule should be made that all notices and processes may be served on the vakil who appeared for the party and his refusal to receive be tantamount to refusal by the party.

66. (*a*) Unfair to plaintiff.

(*b*) Unfair to plaintiff.

(*c*) If the plaintiff so desires, Yes.

(*d*) This would be extremely unfair to other claimants, and would possibly lead to collusive sales at less than value.

67. A special poundage of 10 per cent. might be exacted in such cases.

68. The power should be limited to cases in which the decretal amount is deposited.

72. No. The production of a witness may at same time be optional with the plaintiff, if he wishes to put one forward.

(*a*) Every registered mortgage document should be presumed valid till the contrary shown.

76. No. No need apparent. It may obviate future litigation.

81. Such a plea should not be countenanced.

82. Not the court-fees, but the Court should decree double costs, in such cases.

85. Yes. Provided that the referee's decision is open to appeal.

Mr. R. STUART KING, Circle Manager, Darbhanga Raj, Muzaffarpur, called and examined on Wednesday, the 2nd July 1924.

Mr. James.—*Q.* What is your special experience of litigation in Darbhanga State? Are you concerned with big cases?

A. I have experience practically of munsifs' courts and sub-divisional courts.

Q. You had no concern with the big case of the Darbhanga Raj that lasted for about ten months?

A. I supplied the evidence of many witnesses and it was largely at my instance that it was started.

Q. Did you have anything to do with the running of the case?

A. No.

Q. Do you think that that case took too long and that it should have been shortened?

A. I do not feel in a position to say.

Q. What is the chief cause of delay in a suit like that?

A. The commission took a very long time—two years were occupied and then its report was treated as waste paper practically.

Q. Were there commissions to examine witnesses who did not appear in the civil courts?

A. Yes, the Chief Engineer of the Government of Bengal was examined in Calcutta. He had been Superintending Engineer at Muzaffarpur.

Chairman.—*Q.* What sort of case was that?

A. The removal of a dam against flood which was flooding 60 square miles of our district.

Q. Then the commissson that took so long was a commission for local investigation, for regular survey?

A. Yes, and it had a very difficult business. I think it had to see why the country was so largely flooded—it was a very difficult task. It had to see the land in the dry season as well as in the flooded season. I think if the commissioner had been a man of higher qualifications he would have finished it a little earlier. He was appointed by the district judge.

Mr. James.—Of course if he had to see it at more than one season it was bound to be delayed.

A. Yes.

Mr. Justice Stuart.—*Q.* How long did the commission take—two years?

A. Yes.

Q. Was not one year sufficient—he could have seen it in one dry season and one flood season?

A. I think he was appointed after one season of the year was over and he had to go through two dry seasons and one flood season.

Mr. James.—*Q.* If a witness has to come from a distance of 200 miles is there any reason why he should be examined on commission?

A. I cannot give any opinion.

Q. In suits in munsifs' courts I see you say that the first cause of delay is inefficient process serving, accentuated by the fact that the peons are bribed by the parties. Do you find much difficulty in your case? You give them a certain allowance for every process served.

A. Yes.

Dr. DeSouza.—*Q*. Is that an allowance by way of diet money?

A. By way of diet money. Peons are not very well treated by courts. They are not given railway fares and I pay them their diet money.

Mr. James.—*Q*. Government officials also do it?

A. Yes, various civil service officers have told me that they did the same thing to ensure efficient service. I have not heard it during the last year, but I heard it some ten years ago.

Dr. DeSouza.—*Q*. When is the payment made?

A. After the village accountant has certified that the process has been duly served. It passes back through my office to the court.

Q. Who does the identification?

A. There is an identifier sent with the process-server.

Q. You always send an identifier?

A. Yes.

Q. Where do you get your identifier from?

A. He is the *barahil*, a village man.

Q. Then he is a resident of the village?

A. Yes. He knows every body in the village.

Q. And you use him to serve your processes?

A. Yes.

Q. Is the *barahil* a servant of the Raj?

A. Yes. He is a tenant in the village and he is not very well off. He gets something for doing this work.

Q. Of course, in your own villages, you have got an organisation to get your processes served. What happens with processes which have to be served in villages which are not Raj villages?

A. We have very few such cases, but they are served in the same way.

Q. Do you find that there are too many adjournments in munsif's court cases and that much trouble is due to that?

A. I think there are.

Q. You have to send the witnesses several times?

A. Yes.

Q. There is actually much delay in the disposal of suits in munsif's courts?

A. They are not disposed of within the time which I have put as a reasonable time. They generally, I think, take unreasonable time.

Q. Are there many adjournments in hearing the case?

A. Yes.

Q. How many times are the cases adjourned for bringing evidence?

A. I should say, they are adjourned many times to bring the witnesses. It is the pleader who asks for adjournment to get money from the clients for appearing in the next hearing.

Chairman.—*Q*. Do you instruct your pleader in your cases not to ask for adjournments?

A. Yes.

Q. We have had cases in Bengal where the plaintiff applies for innumerable adjournments.

A. Yes. In most cases it is the pleaders who do it to get their fees.

Q. How do you make payment to your pleaders?

A. Every month. We have special pleaders and they get their fees per day.

Q. If the Court is to go on adjourning for 7 or 8 months then the suits will become very old.

A. Yes, they don't try the case, and I can't blame them.

Q. Then the High Court will have to ask the Munsifs what action they have taken in those long pending cases?

A. So far as my experience is concerned, I think there is very little control over the Munsifs by the District Judges. They have no time to supervise.

Mr. James.—*Q*. What is your experience of village courts?

A. I have no experience. I have been recently elected as president of a village panchayat. I have had some experience of getting cases settled by village panchayats. I send for the plaintiff and the defendant. Of course they are my tenants. I may act as president: but I prefer not to do so and to nominate a respectable villager as president. Some members will be nominated by each of the parties. When the parties have agreed on this, the case will be enquired into. The plaintiff will represent his case and if the defendant shows his willingness to abide by the decision of the panchayat the matter will be amicably settled. This is quite practicable and this is what is going to be done in the Union Boards.

Mr. Justice Stuart.—*Q*. Do you think that the system would work well with all people?

A. All the people in the village will accept this, of course. But it will take effect only very gradually. There are only 4 Union Boards selected in a district where there are three millions of people and I don't think that in other zamindaris, the people are going to such courts.

Sir T. Desikachari.—*Q*. You have been appointed President of Union Board?

A. Yes.

Q. And the members of the Union Board would be elected by the villagers?

A. Yes.

Q. And would the election be upon a very low franchise or is it a universal franchise?

A. Practically universal franchise.

Q. All classes will be in a position to return representatives under the Union Board?

A. Well, there was no actual election by ballot. There is a meeting calling the villagers of 5 or 6 villages and they unanimously choose their members from among them. They discuss thoroughly. I had a panchayat of the best men who had the confidence of the villagers and who have been settling their disputes for the last 9 years. These men were mainly elected.

Q. What sort of castes are the members of this panchayat?

A. They are representatives of all classes.

Chairman.—*Q*. Do you have any really very low caste men on this panchayat?

A. I think there is one dhoby.

Mr. Justice Stuart.—*Q*. Do you get many Kewats?

A. It is full of them. There is a very large Brahmin population and the Kewats are servants of the Brahmins.

Q. Are there Ahiyas?

A. Yes.

Sir T. Desikachari.—*Q*. This panchayat, of which you are President,—does it command the confidence of the people?

A. We have not actually been given powers to try cases.

Q. If these Union Boards settled petty disputes and litigation, would it not save a lot of time, trouble and money to these people?

A. Yes.

Q. Do you think similar success will be obtained in the circles outside your district?

A. I am afraid not. My estate has been under the management of the Court of Wards. The accounts are kept under those regulations practically up till now. Even up to now they don't give the legal forms of receipts.

Q. Do these Union Boards have exclusive jurisdiction?

A. I think they should have and I am strongly in favour of that.

Q. Do you think the litigant would be ordinarily fairly treated?

A. Yes. The village panchayat would get into the bottom of all the facts. There would be nothing concealed from it and it could give more justice in that way to a poor man.

Chairman.—*Q*. What is the present limit for trial of suits in Union Boards?

A. Up to Rs. 100.

Q. You think that such Union Boards would be a success if they are given exclusive jurisdiction.

A. I think at present they would not have a chance in places where the people have no regular state management. But when they see the advantages gained under such Union Boards especially in such estates as are run well, then in the course of 6 or 10 years, it would be a success in other estates.

Mr. Justice Stuart.—*Q*. In other words you are very strongly in favour of the experiment but you would not be in too much hurry to expect to see its result outside well regulated particular estates. Do you think whether there is any harm to try it?

A. I don't think it can do any harm.

Mr. James.—*Q*. Would you limit the right of second appeal in any way?

A. I think I said that the decretal amount should be deposited before second appeals are allowed and not otherwise.

Q. But that would practically mean in ordinary title suits only the deposit of costs decreed?

A. Yes.

Q. You are in favour of one notice only in execution proceedings?

A. One notice only, both for execution and sale.

Q. And not a separate service of sale proclamation on the judgment-debtor?

A. I think I have provided that it should be served by registered post.

Q. But that means more than one notice.

A. I think every chance should be given to the defendant and a registered post card will be quite sufficient.

Q. At present notice has to be served on the judgment debtor at every stage?

A. Yes.

Q. And when sale is about to be confirmed the judgment-debtor comes forward to set it aside, saying that he has not received notice of attachment or some other notice. Do you not think that it would be better to have one notice issued in the beginning?

A. I think I have expressed myself in favour of that.

Q. But you say that copy of proclamation should be sent by registered post.

A. Every possible publicity should be given in the matter of proclamation and I would also like beat of drum. I know that in case of petty zamindars the notice is suppressed.

Q. But the moment you make more than one notice necessary you give chance to the judgment-debtor to delay the proceedings?

A. I see the weak point. Service on the pleader will be sufficient. I may, however, mention that my struggle all along has been with the lawyers that they try to evade responsibility as much as they can.

Q. Do you think that the pleaders will be responsible for all notices and processes and they will represent the party?

A. I think they should take the full responsibility.

Dr. DeSouza.—*Q*. In practice would it not be very difficult for a pleader to keep himself in touch with his client?

A. Of course, he can be in touch with his client.

Q. So far as you are concerned is it so that your pleader is served with notice for you?

A. Everything is served on our pleader.

Mr. Justice Stuart.—*Q*. When you recover the decretal amount do you always go to Court and say that the amount has been recovered and file a satisfaction application?

A. Yes. An application of satisfaction is filed by the pleader.

Chairman.—*Q*. At present I understand that in Bihar as in Assam, the Munsif's decision in a rent suit does not decide the question of title or the rate of rent. The Munsif's decision is final up to Rs. 50 and the Sub-Judge's decision up to Rs. 100 under section 153.

A. I am afraid I have no information about that.

Q. Have you ever considered whether those limits should be raised?

A. I think Munsifs may try title suits up to Rs. 200.

Q. That is rather a different thing. I am thinking solely of rent suits. Would it be of any particular service to you if those limits were raised a little?

A. I don't think I have many such suits.

Q. You are not troubled by appeals.

A. I cannot say I have been much troubled. As far as I can see I think it would be an advantage to increase it.

Q. Do you think any greater use could be made of the certificate procedure than is made now?

A. We are not using it.

Q. I think under the certificate procedure, the execution is by the Revenue Court.

A. Yes.

Q. If there is any great extension of the certificate procedure, it might be necessary to have execution in a civil court, because you will get a lot of trouble by way of claim petitions.

A. I don't like to answer the question; but I should think that would probably nullify the certificate procedure.

Q. Have you experience of execution under certificate procedure? Do you know how it is done or whether it is satisfactory?

A. I don't know.

Q. Are a great many of your rent suits decided *ex-parte*?

A. Yes.

Q. Do you think anything could be done in saving your time or in saving the time of the court; if a special form of summons may be issued in a rent suit and unless the man appears to contest, without taking any evidence at all the decree should go? Do you think it would be possible to do that?

A. It might be possible. But I won't dare to do it.

Q. Could you suggest any other improvement in the way of deciding the rent suits?

A. I cannot suggest any improvement. The Munsifs insist on seeing settlement records even in *ex-parte* suits; and also see that the amount claimed is really in accordance with the rights.

Q. You think the time taken in *ex-parte* work is well spent.

A. Yes.

Q. You would not be in favour of making it mechanical.

A. No.

Q. Do you find any difficulty in deciding the question about the rate of rent? There seem to be cases where the landlords and tenants fight with each other successively and never get the rate of rent decided.

A. I have very few cases.

Mr. MOHAMMAD YUNUS, M.L.C., Bar.-at-Law, Patna.

Written Statement.

1. A. *(i) High Court.*

Original suits.—We have got no original side.

First appeals.—Two years. Now takes about 3 years.

Second appeals,—One year. Now takes about 2 years.

Miscellaneous appeals—

1st appeals.—One year. They are generally disposed of in a year.

2nd appeals.—Six months. They are generally disposed of in a year.

(ii) District Courts.

Original suits.

(*a*) Title, one year. Takes about two years.

(*b*) Money, six months.

Regular appeals, six months.

Small causes, three months.

(iii) Munsif's Court.

(*a*) Title, nine months.

(*b*) Money, six months.

(*c*) Rent, three months.

Small causes, three months.

B. Claim proceedings, three months.

2. They do exceed in many cases. The causes of delay are—

(1) Want of proper method of work and in some cases, insufficiency in the number of judicial officers.

(2) Corruption of process-serving peons.

(3) Time of District and Subordinate Judges being taken up with the administrative works and other miscellaneous works of the Court, which might be done by a special officer, such as a Registrar.

3 A Munsif may be specially appointed to dispose of miscellaneous and administrative works as a Registrar does in the Patna High Court.

4. The recruitment should be made from the practising lawyers, pleaders, vakils and advocates with experience according to the grades of their offices.

5. The Munsifs should be required to pass in languages of the provinces and should pass an examination in survey either before or after selection.

6. Sometimes it is.

7. The standard of efficiency should be the number of contested cases he disposes of in a month, of course, the bulk of the records of cases will have to be taken into consideration.

8. It is true that delay is sometimes caused by waiting for members of the legal profession but generally Courts do not wait, but no purpose will be served by distribution of Courts to different places.

9. I do think so.

10. From Rs. 1,000 to Rs. 2,000.

11. Yes, that may be done.

Selected Munsifs may be given jurisdiction up to Rs. 4,000.

12. District Judges should be relieved of miscellaneous works.

(*a*) *Judicial.*—The exclusive jurisdiction of the District Judges in probate and insolvency matters may be done away with.

(*b*) *Administrative.*—Accounts, Copying Departments and Nazarat may be taken up by Munsifs and Subordinate Judges.

13. Subordinate Judges and Munsifs may take up these works.

19. (*a*) It would be better if no single Judge is allowed to dispose of second appeals.

(*b*) In revisions. No Letters Patent appeal is allowed by our Letters Patent.

20. Some frivolous second appeals are filed in our High Court. They are, however, disposed of under Order 41, Rule 11.

No second appeal should be allowed up to Rs. 1,000.

21. Certainly not.

22. In our High Court the power is duly and systematically exercised.

23. The right is not much abused. If it is sometimes abused the applications are summarily rejected.

(1) No. (2) No.

25. I think application of the procedure under section 106, Transfer of Property Act, is desirable.

26. The usual form of plaints differs sometimes from statement of claim. Lawyers here try to follow no doubt the Civil Procedure Code. But even where it is not done I do not think any delay is caused thereby. Hence there need not be any penalty for non-compliance.

27. Provisions of Orders VII and VIII are not much neglected. But strict rules may be made to compel the parties to conform to the provisions.

28. I think notices in some cases may be conveniently served through post office. Union Committees under the Bengal Self-Government Act may be so utilised.

29. Yes.

30. I think this is a very valuable suggestion.

31. I do not think any better provision than the one in vogue can be suggested.

32. Provisions of Order X, etc., are generally neglected. The Court should insist that the parties should follow the rules strictly.

33. I entirely agree with this suggestion.

34. Not strictly followed and fines should be imposed on witnesses if they do not come without any reasonable cause.

35. No. In view of the answer to the first part other questions do not arise.

36. Affidavits may be accepted as proof *in ex parte* cases but not in other cases.

37. No time-limit should be fixed by Court.

38. Order 37, Civil Procedure Code, can be extended to Small Causes suits and rent suits.

39. Principle of representative suits should have a wider application.

(*a*) In case of Mitakshara family Karta should represent the family in all cases and for all purposes.

(*b*) One co-owner may represent another.

40. No change in the present system for making substitution in case of death, is desirable.

41. Some delay is caused no doubt, but I think it can be minimised by appointing a pleader-guardian which is very often done. Generally successive applications are not filed here, a guardian is proposed and if he refuses to act or does not enter appearance then generally a pleader-guardian or an officer of the Court is appointed to act as guardian.

42. *Ad interim* injunctions are allowed. But that ought to be granted, otherwise the granting of application may be infructuous. The hearing may be expedited.

43. Judgments are not unduly long and I do not think any delay is caused thereby.

44. Yes, sometimes it is disposed of.

45. Dates are fixed by Bench clerks. If dates are fixed in consultation with the vakils of both sides, by the Court, unnecessary delay and postponements would be avoided.

46. Pleaders are seldom consulted. If the Court fixes time after consultation with parties there may not be any necessity to adjourn the case subsequently.

47. Trials are, no doubt, sometimes delayed by examination of witnesses on commission. The chief reason is that the parties are allowed to ask for it at a late stage. Then again irrelevant questions are often put and the commissioner not being in a position to disallow them, time is wasted unduly. I would not add to the powers of the commissioners.

48. Yes. Amount of cost is insufficient.

49. Suits are tried continuously.

50. It is extremely doubtful.

51. Commercial suits are very uncommon in our province.

53, 54, 55, 56, 57, 58 and 59. My opinion is in the affirmative.

60. There is no necessity for it. The Court will exercise discretion in proper cases. Otherwise if it is deleted altogether it might cause hardship to the judgment-debtor in some cases.

61. (*a*) No notice under Order 21, Rule 22 is necessary. It can be made a part of the notice of the execution petition in which substantial relief is asked for.

(*b*) It can also be deleted altogether.

62. In proper cases stay should be granted by the Court which is executing the decree and there is no necessity to get a final order from the original Court which transferred the decree.

63. Notices to the judgment-debtor at the time of attachment and also notices under Order 21, Rule 66, are necessary. But if the judgment-debtor appears the notices may be dispensed with.

64. There is no harm if a copy of sale proclamation is served on the judgment-debtor as well. Writs of attachment and sale proclamation may be issued simultaneously.

Notices cannot be served on the vakils unless the vakils accept them on their own risk.

65. The answer is in the negative.

66. (*a*) Yes, it is desirable that with the plaint the plaintiff should be required to file an encumbrance certificate.

(*b*) Yes, this may be adopted.

(*c*) All parties to the mortgage may be allowed to plead their rights and the rights of all the parties may be finally determined.

(*d*) Yes, this can be done.

(*e*) Too much time is not granted by the preliminary decree. Time should be granted.

There is no necessity for a final decree in simple mortgage suits. There is no necessity for a separate personal decree where the security is exhausted.

67. Stay by the Appellate Court is often necessary to protect the parties. Delay is unavoidable. But in order to stop frivolous application being made the order for *ad interim* stay may always be made conditional on the applicant furnishing security to the satisfaction of the Court.

68. It is desirable that before injunction be granted decretal amount should be deposited in Court.

69. I do not think any change is likely to improve the situation.

70. Execution proceedings are sometimes delayed by the judgment-debtor avoiding service. The present procedure is that if a judgment-debtor goes out of the jurisdiction of a particular Court the decree is transferred to the Court where he has gone in order to get his arrest. The application for transfer has to be made in the Court which passed the decree. This often delays the matter and if the Court to which the decree is transferred for execution, is also given powers to transfer the decree in its turn to another Court then much time would be saved thereby.

Yes, provision for arrest and attachment before judgment has to a great extent prevented the delay.

71, 72, 73. The answer is in the affirmative.

74. I do not think it need be more stringent in any case.

75. Abolition of all notices to judgment-debtors in connection with execution proceedings.

76. Yes, partition of immoveable property should be evidenced by registered document.

77. Partnership started with a capital of Rs. 100 and other contractual partnership should be by registered document.

78. I agree.

79. It may be so done.

80. There is no necessity for registration. Finger-prints may supply the place of signature in case where the parties are illiterate.

81. A party to a document should not be allowed to say that it was only a sham transaction or that the apparent owner is not the real owner. *Benami* should not be allowed to be pleaded but as it has been the custom of this country to purchase property in the name of others the law should be made applicable to those transactions only which take place after the expiration of one or two years since the passing of the Act.

82. No enhancement of court fees necessary. As it is, in many cases it is prohibitive in our province.

83. No justification for making any difference.

84. English Law on the subject may be introduced.

85. I would not.

86. The multiplication of law reports no doubt has interfered with speedy justice, but it has made it more efficient. In this view I do not suggest minimising their number.

87. I do not think so.

Memorandum of the oral evidence of Mr. MOHAMMAD YUNUS, M.L.C., Bar.-at-Law, Patna, taken on Monday, the 7th July 1924.

It takes 3 years sometimes for a suit in the Sub-Court to be disposed of—a question of adoption or a suit of very high valuation. It is through no fault of the trying Court. The suit was started as a pauper suit. Then a Court fee had to be paid according to orders of the Court. The question arose whether the proper Court fee was paid. This had to be settled by the High Court. Therefore delay.

There is a lack of proper method of work. Work is allowed to be interrupted by miscellaneous work of different kinds. This want of method causes delay.

Too many suits are fixed for a day—more than could be disposed of reasonably. Sometimes short dates are given. It would be desirable to have dates fixed in consultation with lawyers.

Service by process-servers, at present, is unsatisfactory. My impression is that at least 80 per cent. are not personally served, though they may be reported to be personally served. In cases in which the signature of the defendant is not obtained the report is not likely to be true. In such cases the process peons do not go out of the Court compound. Defendants refuse to receive the summons sometimes, but more often the return to the effect that they refused is false.

Service through the post office may be a remedy for putting down this evil.

If the process-servers obtain the signature of the village headman, it would improve matters.

If process servers are made to sign a visitor's book maintained by a Village Union official this might ensure the visit of the process-servers to the village.

I am in favour of the appointment of a Registrar for all the Courts at headquarters, to do much the same work as the Registrar of the High Court does. He could dispose of *ex parte* decrees. He should not be allowed to dispose of interlocutory applications, as applications for injunction.

I am in favour of work, under the special enactments like Indian Succession Act, Probate and Administration Act, Land Acquisition Act, Insolvency Act, Succession Certificate Act, etc., being devolved on Sub-Courts.

I am in favour of preventing second appeals in suits of the value not exceeding Rs. 1,000. Many of them are frivolous. Second appeals may be allowed in all cases where the first Appellate Court differs from the original court.

Section 106 of the Transfer of Property Act—the provisions like those of this section may be used in the case of service of processes.

Parties must be examined after the settlement of issues, before the hearing is commenced, as a part of the trial.

Commissioners to examine witnesses should not have the powers to decide questions of relevancy.

Executions are very much delayed—I mean execution proceedings in Courts. I am in favour of cutting down the period prescribed by section 48, Civil Procedure Code, to eight years provided Article 182 is altogether got rid of.

Mr. P. C. MANUK, Bar.-at-Law, Representative, Bar Association, Patna High Court.

Written Statement.

1. A. *(i) High Court.*

Original suits.—We have got no original side such as in the Presidency-towns. Only matrimonial and probate cases and cases under the extraordinary jurisdiction are occasionally tried in the High Court. These are so rare as to be negligible in this Court.

First appeals.—One year, now takes about three years.

Second appeals.—Nine months, now takes about two years.

Miscellaneous appeals—

1st appeals, 6 months, now they are generally disposed of in a year.

2nd appeals, 3 to 6 months, now they are generally disposed of in a year.

(ii) District Courts.

Original suit—

(*a*) Title, one year, takes about two years.

(*b*) Money, 6 months, takes 8 to 12 months.

Regular appeals, 6 months, takes about 9 to 12 months.

Appeals from orders, 3 months, takes 6 to 8 months.

Small causes, 3 months, takes 5 to 6 months.

(iii) Munsifs Court.

(*a*) Title, 9 months, takes 18 to 24 months.

(*b*) Money, 6 months, takes 12 to 15 months.

(*c*) Rent, 3 months, takes 9 to 12 months.

Small causes, 3 months, takes 5 to 6 months.

B. (1) Claim proceedings, 2 months, takes 3 to 4 months.

C. We are not concerned with this.

2. They do exceed the reasonable limit in most cases, the time now ordinarily taken is given already. The reasons of delay are:—

(1) Want of sufficient number of judicial officers.

(2) Neglect by parties in getting notices served, avoidance of service and substitution proceedings.

(3) District and Subordinate Judges being burdened with administrative work of the Court, *e.g.*, supervising copying department and nazarat, etc.

Generally an officer is deputed from amongst the judicial officers for these purposes.

3. The ministerial work should be left entirely in the charge of junior Munsifs and District Judges, Subordinate Judges and other Munsifs would then be free to dispose of more cases. Other remedies are suggested in the replies to subsequent questions.

4. The recruitment should be made from practising lawyers, pleaders, vakils and advocates with experience suitable to the grades of their offices.

5. The Munsifs should be required to pass in languages of the province and should pass an examination in survey either before or after selection.

If possible they should at first be allowed to dispose of only *ex parte* cases, rent suits and petty cases and should receive their training for at least three months by attending the Courts of experienced Subordinate or District Judges.

6. Transfers may sometimes impede the speedy disposal of cases but if before an officer is transferred he is consulted as to whether he is in the midst of a lengthy part-heard case or not, this would be helpful. In this province in some case this practice has been adopted.

7. Judicial officers should not be required to do a particular number of cases. Their standard of efficiency should be judged from the manner in which their work is done and the quality of their work. The present method of asking for returns as to the number of cases disposed of, number of witnesses examined, and even the number of words written daily is highly undesirable. The District Judge should exercise general supervision and rectify errors.

8. Little delay of any consequence is caused by waiting for members of the legal profession.

9. We do think so as to speed, but are doubtful as to costliness.

10. Munsif's jurisdiction should be enhanced from Rs. 1,000 to Rs. 2,000.

11. Yes, this may be done.

Selected Munsifs may be given jurisdiction up to Rs. 4,000.

12. District Judges should be relieved of miscellaneous work.

(a) *Judicial.*—The exclusive jurisdiction of the District Judges in insolvency and guardianship matters may be done away with—also possibly in unimportant suits under section 92, Civil Procedure Code and probate matters.

(b) *Administrative.*—Subject to general supervision by the District Judge, accounts and copying departments and nazarat may very well be taken up by junior Munsifs.

13. Subject to reply to Question 12, generally acceptable. Only selected officers for periods which may or may not be extended.

14. There should not be any Village Courts at all.

15. No.

16. (a) Yes, but not (*f*) (ii).

(b) Yes.

17. It will certainly save the time of the officers concerned. The uncontested cases in sub-divisions may be tried by Sub-Registrars, who hold a law degree or are qualified to practise as pleaders, up to the jurisdiction which Munsifs have. This is only practicable in sub-divisions, as in districts the Sub-Registrars are generally already overworked.

18. The right to appeal cannot be curtailed in the present state of the judiciary.

19. (a) It would be better if no single Judge is allowed to dispose of second appeals in which event Letters Patent appeal would automatically disappear.

(b) In revisions civil and criminal no Letters Patent appeal is allowed by our Letters Patent, clause 10.

N.B.—So far as orders in transfer matters passed by a single Judge are concerned, these should not be placed before a single Judge or, if placed, no Letters Patent appeal allowed.

20. We do not think so. Even if some are filed they are disposed of under Order 41, Rule 11.

In all title suits second appeals should be allowed for although the valuation of that particular case may be small, it might involve important questions of law affecting other valuable properties.

21. The appellant should not be asked to deposit the decretal amount in full for that may have the effect of stopping *bonâ fide* appeals in many cases.

22. In the High Court the power under Order 41, Rule 11, is duly and systematically exercised in respect of second appeals. First appeals are admitted as a matter of course and this practice should be followed.

23. The right is not generally abused. Even if stray attempts are made to abuse it, that cannot cause appreciable delay, for applications are moved in Court and may be at once rejected if without substance. If the question implies that such revisions are too generously dealt with, I do not agree. On the other hand, I am strongly of opinion that it will curtail litigation if the High Court's hands are unfettered. When the High Court can by interfering in revision terminate the litigation, the mere fact that another remedy by suit only lies should not *per se* be a reason for non-interference.

(1) Deposit of the decretal amount would often cause hardship and in a perfectly *bonâ fide* and good case a man may be deprived of his remedy because of poverty.

(2) Our High Court seldom interferes with interlocutory orders, but its power to do so should remain.

24. It is difficult to see how any change in the present procedure could make justice more speedy and economical. The practice as to the period allowed for processes may be curtailed and adjournments should not be so frequently given.

25. Service by parties as is done under section 106 of the Transfer of Property Act would certainly lead to complications and to frequent applications under Order 9, Rule 13, or Order 21, Rule 90 (see also reply to Question 28).

26. The usual forms of plaints differ generally from statements of claim. The English form may be adopted with advantage. Lawyers in India no doubt try to follow the Civil Procedure Code but are apt to be prolix and argumentative. We cannot recommend any penalty but would suggest that the plaint should be returned in all such cases.

27. Provisions of Orders VII and VIII are often neglected. Stricter observance of the rules should be enforced (see reply to Question 26). The time for filing written statements under Order VIII should in practice be shortened. Ordinarily written statement should be filed within a month from the date of service of summons failing which the suit will be decreed unless very special grounds are shown for extending the time. Extensions of time are far too generously allowed.

28. We do not think notice can in all cases be effectively served through the post office. The services of the Union Committees under the Bengal Local Self-Government Act may be utilised with advantage.

29. At the time of appearance a party may be asked to give a registered address where all notices would be sent in future—such a rule would be advisable. Notice may also be effected by service on the pleader if he accepts it.

30. It is always desirable that the process-server should report to the pleader.

31. The practice now generally followed in this province is that the pleaders of both sides are asked to suggest issues and the Court finally settles them. There is no reason to deviate from this practice.

32. Provisions of Orders X, XI and XII, etc., are generally neglected. The Courts should insist that the parties should follow the rules strictly and disallow costs which may have been saved by observance of the rules.

33. The suggestion would tend to minimise the evidence but I doubt if it is practicable. Is it contemplated that the plaintiff and defendant *must* be examined before either is allowed to call any evidence? Then, what about *purdanashin* ladies who are parties? Possibly a discretion might be given to the Court to insist on such procedure in appropriate cases.

34. Not strictly followed. Fines should be imposed on witnesses if they fail to attend without any reasonable cause.

35. Unnecessarily witnesses are sometimes called. The Courts even now have discretion to overrule irrelevant questions and thereby control the evil. They have not and should not have the power summarily to refuse permission to examine particular witnesses, but they should be armed with powers to mulct the party in *penal* costs regardless of the result of the suit. The authorities are now to the effect that penal costs cannot be allowed.

36. Affidavits may be the mode of proof in *ex parte* cases, succession certificate proceedings, etc., but not in claim cases. Fuller enquiry is therefore advisable in such cases.

37. Impracticable. A competent officer can always control this.

38. Order 37, Civil Procedure Code, should be extended to Mofussil Courts in Small Cause Court suits and Rent suits and in fact in all suits covered by Order 37, Rule 2, irrespective of value.

38. The general question is not understood.

(*a*) In the case of a Mitakshara family, a Karta should represent the family in all cases and for all purposes.

(*b*) Regarding co-owners, the law requires no change.

40. No change in the present system for making substitution is desirable. Any change seems impracticable.

41. Some delay is caused and I think it can be minimised by the remedy suggested in the question. After exhausting this procedure a pleader-guardian should be appointed, as is now generally done.

42. In my experience undue advantage is not taken of the practice. *Ad interim* injunctions are and should be allowed. The hearing should always be expedited.

43. Judgments are not generally speaking unduly long. When they are, it is open to the Appellate Court to animadvert on the particular instance and thus correct the tendency.

44. Yes, usually, but not always.

45. Dates are fixed usually by the Judge himself, but if dates are fixed in consultation with the vakils of both sides, whenever practicable, unnecessary delays would be avoided.

46. Pleaders are generally consulted.

47. Trials are invariably delayed by examination of witnesses on commission. One reason is that the parties are allowed to ask for commissions at a late stage of the suit. Then again irrelevant or argumentative questions are *very often* put and the commissioner, not being in a position to disallow them, time is wasted often in a scandalous fashion. The commissioners should be given powers to disallow questions whenever they think necessary in the same way as the Court.

Interrogatories should be insisted upon in all cases.

48. Here written applications for adjournments are generally made. Costs are in the discretion of the Court (Order 17, Rule 1) and where the Court thinks that the application is frivolous or, for any other reason, the Court should grant it only on condition of payment of *penal* costs. A rule to this effect may be added in Chapter III of the General Rules and Circular Orders of the Patna High Court.

49. Suits are tried continuously.

50. I am not in a position to answer this, but I think that inspection by High Court Judges (during holidays) should be more frequent than at present.

51. Commercial suits are not very common in our Mofussil Courts. The Courts are competent to exercise discretion in expediting commercial suits.

52. See reply to following questions.

53. May be extended.

54. The Court to which a decree is transferred for execution should be invested with the same powers as the Court which passed the decree.

55. Section 47, Civil Procedure Code, should be modified to include proceedings taken by a stranger purchaser.

56. (*a*) Period of limitation as given by section 48, Civil Procedure Code, may be curtailed in case of money decrees below Rs. 500 or Rs. 1,000 but not in other cases.

(*b*) and (*c*) Period of three years as allowed by Article 182 of Limitation Act may be altered to one year, if the period is computed from the last order and not from the last " step in aid " of execution by the decree-holder. The words " step in aid " have led to much controversy and confusion.

N.B.—Very debatable.

The last suggestion in the question would be acceptable.

57. This may be done.

58. This should be done. We would add the words " or solicitor " after the word " vakil."

59. An affidavit by a transferer may be considered sufficient. The first proviso may be modified accordingly. The second proviso may be modified by adding to it the words:

> " but contribution *pro rata* may be obtained by execution proceedings,"

We see no reason to drive such a purchaser to a separate suit on so small a question.

60. There is no necessity for a change. The Court will exercise discretion in proper cases.

61. (*a*) No notice under Order 21, Rule 22, is necessary. It can be made a part of the notice of the execution petition, in which the substantial relief is asked for.

(*b*) It can also be deleted altogether.

62. A provision as suggested would work hardship in our opinion. On the contrary we would give the executing Court power to grant a stay on terms without referring the judgment-debtor to the Court passing the decree.

63. If the judgment-debtor once appears, no further notices need be served on him at the different stages of execution.

64. I would favour a provision for a copy of the sale proclamation being served on the judgment-debtor as well. Writs of attachment and sale proclamations may issue simultaneously.

65. I do not think it practicable to lay down that service on the vakil is sufficient service and refusal by him is tantamount to refusal by the party to accept service. There are numerous difficulties in the way of framing so stringent a rule.

I do not approve of the execution of arrest warrants by village officials. The present system is satisfactory.

66. (*a*) Yes, it is desirable that with the plaint the plaintiff should be required to file an encumbrance certificate.

(*b*) Yes, this may be adopted.

(*c*) All parties to the mortgage may be allowed to plead their rights, and the rights of all the parties may be finally determined whether the plaintiff so desires or not.

(*d*) Yes, this can be done.

(*e*) Too much time is not granted by the preliminary decree. Reasonable time should be granted according to the amount of decree up to six months as now.

There is no necessity for a final decree in simple mortgage suits. An order for sale is all that is necessary. There is no necessity for a separate personal decree where the security is exhausted.

67. We do not think that much *avoidable* delay is caused. But in order to stop frivolous applications being made, the order for *ad interim* stay may always be made conditional on the applicant furnishing security to the satisfaction of the Court. If this is done, the necessity for awarding exemplary compensation would hardly arise.

68. It is desirable that before injunction be granted the decretal amount be deposited in Court or security given.

69. The present law as to insolvency does stand in the way of a decree-holder getting the fruits of the decree speedily. A long time is taken by the debtors in producing books of accounts and filing inventories of properties, etc., see section 22. These should be filed in Court within two weeks after the petition is admitted, and the final hearing of the petition should not be delayed more than three months after the date on which the petition is admitted. All Subordinate Judges should be invested with powers to try and determine insolvency cases.

70. Execution proceedings are sometimes delayed by the judgment-debtor avoiding service. The present procedure is that if a judgment-debtor goes out of the jurisdiction of a particular Court the decree is transferred to the Court where he has gone in order to obtain his arrest. The application for transfer has to be made to the Court which passed the decree. This often delays matter and if the Court to which the decree is transferred for execution is also given power to transfer the decree in its turn to another Court, then much time would be saved thereby. A more drastic remedy would be to give the decree-holder power to arrest his judgment-debtor anywhere on the basis of an order of arrest passed by any court, but the arrest must be made by the officers of Court.

Yes, the provision for arrest and attachment before judgment has to some extent prevented delay.

71. See replies to next questions.

72. (*a*) No. (*b*) Yes.

It will be useful to effect both changes.

73. This should be done. Much time and money are spent and often certified copies are not obtainable and valuable evidence thus shut out.

74. Present provision need not be disturbed except as to Articles 156, 157, 173, 178 and 180.

75. This is far too comprehensive for an answer in the short time at my disposal.

76. Yes. Partition of immoveable property should be evidenced by registered documents.

77. Partnerships started with a capital of Rs. 100 and other contractual partnerships should be by registered document.

78. The equitable doctrine should prevail and if necessary the Transfer of Property Act should be so amended as to make this clear.

79. May cause great inconvenience in the mofussil.

80. There is no necessity for registration. Finger-prints may take the place of signatures in cases where the parties are illiterate.

81. A party to a document should not be allowed to say that it was only a sham transaction, or, that the apparent owner is not the real owner. *Benami* should not be allowed to be pleaded. As, however, it has been the custom of this country to purchase property in the names of others, the new law should be made applicable to those transactions only which take place after the expiration of one or two years after the change is effected.

82. No enhancement of court-fees necessary.

83. We would retain the provision. They should be attested and so should deeds of sale and leases.

84. No change is necessary.

85. Not without the consent of parties.

86. No law reports other than authorised reports of Government should be allowed to be cited in Court. But there should be better arrangements for law reporting. Each High Court should have a Law Reporting Committee and the members of the legal profession should have a larger hand in the matter.

87. Codification is helpful.

The Hindu Law may be codified—likewise the Mohammadan Law.

Mr. P. C. MANUK, Barrister-at-Law, Representative, Bar Association, Patna High Court, called and examined on Wednesday, the 9th July 1924.

Chairman.—You are a Barrister-at-Law, I think, practising in the High Court?

Mr. Manuk.—That is right.

Q. And the answers which you have been good enough to give us are not only your own opinions but, I understand, they represent the opinions of the Bar Association?

A. Yes.

Q. Is that the Bar as distinct from the Vakils' Association?

A. Yes.

Q. It is not necessary to take you over all the questions as we have got your written answers. I understand you to say that first appeals in your High Court take about 3 years and second appeals about 2 years?

A. That is the general impression at the Bar.

Q. Can you tell me is that going from bad to worse or is the court gradually overtaking its file?

A. I do not think that they are overtaking the file. Even with two additional Judges they are not catching the work.

Q. Now as regards first appeals the difficulty there is, I take it, that the preparation and printing of paper books is a matter of very considerable expense?

A. That is so.

Q. In your High Court are paper books prepared in the court's office or are they prepared outside by the appellant's pleader?

A. I cannot give you any information because I am not in touch with that.

Q. Do you find that in practice as a matter of commonsense a lot of stuff is printed for your first appeals, which is really not wanted by the Bar?

A. An enormous amount absolutely useless—three times out of four.

Q. I take it that you have a system under which the book is printed with part 1 and part 3 so that if there is a Privy Council appeal it can go straight away with part 2 added?

A. Yes. That has been introduced recently.

Q. Is that applied to first appeals which are, say, under Rs. 10,000, or to all?

A. I do not know.

(*Mr. James.*—No).

Q. It only applies to those appeals as to which there is some probability of their going up to the Privy Council?

A. That is my impression.

Q. In those cases do you have anything at all to do with advising as to what papers should be included in the appeal paper book?

A. Counsel of my standing does not.

Q. Do you know whether in practice that kind of work is really done by the Bar at all.

A. Yes, generally by the vakils.

Q. And do you sometimes come across cases where in order to utilise a single item of account, they copy the whole account?

A. Very often. For a single line, the whole document, which is otherwise irrelevant, is printed.

Q. Who, as a matter of fact, settles the paper book, that is to say decides what should be included?

A. Vakils on either side come down to the office and they inform the office as to what they want to print.

Q. The office does not choose any documents?

A. I think so.

Q. It does not exercise any discretion at all?

A. No. I imagine that the vakils direct the preparation of the paper book entirely.

Q. They submit the documents to be printed?

A. Yes.

Q. Do they apply their minds and prune them down?

A. I do not think so.

Q. To whom is the list submitted—to a clerk or the registrar?

A. I believe to the registrar or to one of the subordinates. It goes to the registrar eventually.

Q. That is all wrong because, first of all, there is an order of the Privy Council that the registrar should cut out all that is unnecessary and useless, pruning all formal documents. In a recent case in Lahore, that went up to the Privy Council, the Privy Council did not look at it until it had taken the paper book and torn out 150 pages and very properly reprimanded everybody concerned. It says that the registrar is to be there for the purpose of seeing that this sort of thing is not done. You are not an expert on that because it does not come before you?

A. Yes. I can only give you results—the results are very unsatisfactory.

Q. Apart from the Privy Council do you see any reason why *all* the papers that may be necessary for a first appeal should be printed. If the bulk of the papers—the papers on which the judges will have to spend the bulk of their time—were printed, do you think it is necessary to print everything?

A. I would not, apart from the Privy Council rule.

Q. But the difficulty is that under the Privy Council rules if the case goes further you would have to print again and that causes further delay?

A. Yes.

Q. Have you a rule that if anything is not printed you will meet with great difficulty in using it?

A. The rule is that if anything is not printed in the paper book you have to type it and give notice to either side.

Q. In some places we have met with the suggestion that only cases of Rs. 7,500 or Rs. 10,000 in value should go direct to the High Court and that under these limits they should go to the district judge; there should only be a second appeal to the High Court. Would you be in favour of that?

A. I think so. I would be.

Q. On the ground of minimising the expense?

A. Yes.

Q. There are two objections; first of all there will be an extra trial, that is to say, you go through the district judge before the High Court and secondly you have this position, namely, that when you do go before the High Court, it cannot interfere with facts?

A. I think the judiciary is improved and I do not see why the limit should not be raised. That is only my personal experience. I would not raise it very much but, I think, it may be raised to Rs. 7,500 as a tentative measure.

Q. It has been proposed by the Punjab High Court and we met that suggestion in connection with Assam which has a long way to come to Calcutta and it involves a good deal of expense.

A. Yes.

Q. Now about second appeals. Looking at the list of second appeals in your court, I observe that an enormous number of them are of very small valuation and a very substantial number of them appear to be suits under the Rent Law?

A. Yes.

Q. I understand too that the practice here is that second appeals below Rs. 1,000 in value go before a single judge?

A. Yes.

Q. And the consequence is that there is a fairly substantial number of Letters Patent appeals?

A. Yes.

Q. Now, of course, you will agree with me that sometimes, I do not mean seldom but in a substantial number of cases, small cases are of considerable importance to the parties and are considerably difficult from the lawyers' point of view?

A. Yes, very often. There was a case which went to the Privy Council and was decided by the full bench consisting of three judges. That was an extreme case.

Q. We had the same in Calcutta. A very big case which went to the Privy Council was actually of very small value.

A. Yes.

Q. Now do you think it is impossible in any way to discriminate between the small cases which have importance either as a point of difficulty or which are of personal importance to the parties and the bulk of small cases which are not really any more important than small cause suits over Rs. 500? Do you think it is possible in any way to discriminate between them for the purpose of limiting in the unimportant ones the right first of all to second appeals and then to Letters Patent appeals?

A. I do not see why the Registrar should not be given the discretion to do that.

Q. Do you think it is possible, for instance, that under a certain limit the right of second appeal should be allowed by leave of the court—I mean on showing that there is something *primâ facie* doubtful in the judgment, showing that there is special importance to the parties or showing that it raises a difficult point of law? Do you think in any way the flood of small second appeals can be stopped by exercising a discretion such as you can do if the second appeal was an appeal by leave as it is in certain cases in England?

A. In some cases I think there is a check under Order 41, Rule 11.

Q. My suggestion is that at present you can not stop appeals merely by reason of their value because you get small appeals of very great importance. Do you think it is possible to add to Order 41, Rule 11, something like this? Instead of saying that the court may summarily dismiss it, the court may dismiss it if in the opinion of the court further hearing is not required in the interest of justice. Do you think that would have some effect?

A. Although my association is against it, I do not see why there should not be some such provision.

Q. Do you think that the provision should be applied to all second appeals or that it should be limited?

A. I should limit it to very small second appeals.

Dr. DeSouza.—*Q.* What would be the limitation?

A. Well something like Rs. 250 to Rs. 500.

Mr. Justice Stuart.—*Q.* The appeal would be admitted as a matter of course, if it were really important. But there are a number of appeals in which a point of law arises which are trivial to a degree. I had myself once to decide the following appeal. A man appealed on the ground that he had been ordered to pay two annas and that it was too much. There was no question of principle involved, but there was a point of law involved and the arguments lasted for over an hour. I decided that the man ought to pay one pie and not two annas. Does not the existence of such appeals justify some limitation?

A. I should certainly limit it to Rs. 250. Beyond that I do not think that the court should have any discretion.

Dr. DeSouza.—*Q.* Would it not in any way affect the present procedure that the registrar does most of the admission work?

A. Yes, the registrar does the admission work under Order 41, Rule 11. He passes it on to the bench if it has to be admitted.

Q. Would it not mean that the registrar will not be able to admit or reject?

A. I should leave it to the discretion of the bench and not to the discretion of the registrar.

Chairman.—The result would be that whereas now the bench is only troubled under Order 41, Rule 11 about those cases which the registrar thinks doubtful, the bench or at least one judge would have to hear all such cases in order to exercise discretion—real discretion.

A. One judge should do that work. I have no objection up to Rs. 250.

Q. As I understand at present no minimum limit as regards court fee is fixed for second appeals, that is to say, in very small appeals a man simply pays his proportion. Do you think it is possible to fix a certain limit of court fee, that is to say, that the amount of court fee for small appeals should be, say, Rs. 15 or Rs. 20 and that in every case Rs. 40 security for costs should be tabled with the appeal?

A. I think something quite moderate should be fixed. I have no objection.

Q. If it is true that a second appeal takes something like two years and it seems to be true that the trial would have taken at least a year and the first appeal probably 9 months or something of that sort, the respondent is put to a very long delay and very little is done to preserve his interests. Apparently in India we do not do anything at all by way of taking care of the respondent's interests and we know that in every court we go to, over 70 per cent. of the second appeals are absolutely unsuccessful.

A. I would not object to a rule if the thing is kept moderate.

Q. Of course if a man has got no money at all and if he can't pay even Rs. 40 as security, is it not a very serious thing to allow him to litigate further against a man who has been found to be in the right?

A. Yes.

Q. Another point is this. When a person applies for stay of execution in the case of a money decree I think most courts put him on terms, and ask him to furnish security. But a man may appeal and he may have no stay of execution. He may take a large number of objections in execution and keep his creditors at bay and we do not use the fact of his appeal in any way to oblige him to pay up any of the decretal amount or the costs in the court below. Do you think it would be too severe if some rule is made which would require the courts on the admission of the appeal to consider that matter, that is to say, to consider not only whether the appeal should be admitted (as under Order XLI) but whether as a term of admitting it some condition should be imposed in second appeals? Do you think a fairly free exercise of that discretion would be a good idea?

A. I rather think not. I think it might hamper the ends of justice. I have already accepted the suggestion about the deposit.

Q. Do you find that Order XLI, Rule 11 is exercised very differently in different hands?

A. Yes, like section 115.

Q. Coming to section 115 in your court I think as in Calcutta, you don't follow the Allahabad ruling, that it cannot be applied to any interlocutory orders.

A. We don't.

Q. It is left to the discretion of the court to take the thing into account.

A. Yes.

Q. Have you any idea as to the number of applications in revision under section 115 that are rejected straightaway? Are they very many?

A. I can give only the impression in my mind. Of course I have no statistics. The impression is probably one in three is rejected.

Q. In those cases where the rule *nisi* is granted, what proportion, do you think, are cases where the rule is afterwards made absolute?

A. I should say about 30 per cent. probably.

Q. Have you any idea as to how long it takes from the rule *nisi* being granted till it is dealt with either discharged or made absolute? Is it a question of 2 months or 6 months?

A. It all depends upon the diligence of the vakils and the parties. If they are diligent, you can get it done within 3 months.

Q. Dose the High Court often grant rules *nisi*?

A. No. Only in extreme cases.

Q. Do you think there is anything in Indian conditions to justify a rule *nisi* not coming on for hearing for 3 months?

A. Rules *nisi* should have precedence and should be made to come on three weeks.

Q. In such a case is there anything that could be done to simplify? Could you make a rule that it will be sufficient to serve on the vakil in the lower court?

A. I don't think it could—vakils would never take the responsibility. I don't think in practice you can do that.

Mr. James.—The notice may be sent to the lower court to be served on the party a day before the hearing. The High Court always do so and send it to the lower court and they are served a day before the date on which the case is fixed for hearing.

Chairman.—*Q*. You think, the right to interfere mostly does substantial amount of good and you think that there is no grievance as regards anything in the Lower Court?

A. Never.

Q. As regards section 115, have you ever in your practice thought about the line supposed to be drawn up which could be made?

A. The right is not generally abused. Even if stray attempts are made to abuse it, that cannot cause appreciable delay, for applications are moved in court and may be at once rejected if without substance. If the question implies that such revisions are too generously dealt with we do not agree. On the other hand we are strongly of opinion that it will curtail litigation if the High Court can by interfering in revision terminate the litigation, the mere fact that another remedy by suit lies should not be a reason for noninterference. High Court seldom interferes with interlocutory orders, but its power to do so should remain.

Q. One question on general lines I will ask you and that as regards execution. You made some suggestions about this question of section 2 of the code and section 47. It seems to me easy to obtain the right of appeal even in a case which has no points in it. Is there any way by which the right of appeal in an execution can be specially curtailed?

A. I cannot say.

Q. Do you think it will be improved if it were laid down that in the District Court Order 41, Rule 11 should be regularly exercised in execution? I understand that Order 41, Rule 11 is a sort of indecent thing to exercise in the district and other courts here whereas in other provinces these powers are regularly exercised and appeals are put up for examination under that rule.

A. Order 41, Rule 11 is never applied as it is thought it is not the proper thing to do.

Sir T. Desikachari.—*Q.* You would hear the pleader before passing an order?

A. Yes. In the civil side much time is wasted in the District courts in all the districts by hearing quite useless things. There is absolutely nothing in the case.

Q. Why should not the judge interfere?

A. Why should he? He is going to write a treatise on the subject anyhow. They do not want to hurt the feelings of any one.

Q. Is it at all true that the Judge after hearing for three or four days cannot make up his mind? My experience is I argued a case for 2 days and the opponent replied for 3 days. I replied for 2 days. The judge hearing all this said "I don't know anything of the case."

Chairman.—*Q.* If a man after hearing for 7 days knows nothing of the case then I know no method and the best thing will be to remove him. Is it a fact that District Judges and Munsifs frequently want time to read records and do not come prepared?

A. I don't say that generally now. But stating about Judges it is better than it was before.

Q. Within your experience of munsifs' courts, do you find that the judge gives out the decision straightaway or does he take time to read everything and decide?

A. Often decisions are given straightaway.

Q. Do you think for lack of an opening on some or most occasions the Judge goes on mechanically reporting evidence and admitting questions whether relevant or not? Have you met with such an experience?

A. I cannot say that I have recently come across such an experience. There is a distinct improvement now. But they have no power to shut out evidence. I think it might be possible to give the court discretion to stop it.

Q. Do you have to insist upon your right to open cases?

A. Yes, it is not easy to get this before sub-judges and munsifs.

Q. Do you think that if a man is required to open his case, the chances of his changing in mid career are minimised?

A. Yes.

Q. About the pleadings that you see in first appeals, for instance, or in second appeals in title suits, do you think that anything can be done to make them a little tidy and more reasonable?

A. Yes by making the gentleman who draws the pleadings a little more careful.

Q. In this province do you think that pleadings, in fact, are drawn by pleaders and not by petition writers or touts?

A. Very rarely they are drawn up by such people but my experience is that 90 per cent. of the pleadings are prolix and argumentative.

Mr. Justice Stuart.—They offend against every rule that is laid down in the Code as to how pleadings should be framed.

A. That is right.

Q. And not only they contain every point that they should not contain but they usually omit the points which they should contain.

Chairman.—*Q.* As regards that do you see any practical way of doing anything to improve pleadings?

I think the court should return the pleadings for necessary amendment.

Q. Of course you will have to do that at the time it is filed?

A. Yes.

Q. That would mean that every court will have to read the pleadings; theoretically it has to do now but it is not done in practice?

A. Yes, in practice it is not done.

Q. Do you think it fairly reasonable, as things are, to make the judge read all the pleadings?

A. I do not see why he should not do that.

Q. If you accept the plaint you cannot reject it after issuing the summons?

A. No.

Mr. Justice Stuart.—*Q*. Is it not your experience that the plaint is not so bad as the written statement? After reading many pleadings in this province and in other provinces, I find that the plaint does not offend the rules as much as the written statement; if the plaint contains one unnecessary paragraph, the written statement contains three unnecessary paragraphs.

A. Yes.

Chairman.—At the time of the settlement of issues the judge should make up his mind whether the pleadings are in reasonable form and if they offend any rule he should make an order for striking out the particular paragraphs.

A. That is right.

Mr. Justice Stuart.—*Q*. Do you not anticipate that there is likely to be friction if that is done? The man, who has drawn the pleadings, thinks that they are most beautiful. The judge finds that they offend the rules. When he points out the defects to him he hurts his feelings and probably causes an unpleasant controversy.

A. Probably there would be heart burning then.

Q. And we want co-operation and not friction?

A. If the judge is tactful it will be all right.

Chairman.—I think you may order further particulars to make the meanings clear.

A. Yes, that will be better.

Mr. Mohammad Hussain.—*Q*. Would it not be safer to check at the very time when the plaint is field? There should be an officer to see whether the plaint is in accordance with the form or not. There is a law but if there be more supervision that would improve matters much.

A. Would you have a special officer?

Q. A special officer might do.

A. You might have a munsif and he will probably be quite good.

Chairman.—Now as regards execution I see you suggest that Article 182 of the Limitation Act might be altered to one year if the period is computed from the last order and not from the last step in aid.

A. Yes.

Q. At present the difficulty is that we get an enormous number of applications in execution merely brought for the purpose of saving the decree. It is true that these applications—steps in aid as they are defined—need give little trouble to the court. They cost eight annas, or something like that, to the decree-holder and as no notice is to be served on the judgment-debtor they serve no useful purpose.

A. Quite so.

Q. And one would like to consider whether you can wash them out altogether, that is to say, keep the decree alive for a certain period and wash them all away.

A. I have suggested that. There is no point in having execution petitions filed over and over again.

Q. Having regard to the tremendous number of *ex parte* decrees, would you object if the period of 12 years, in the case of *ex parte* decree, is cut down to six years and all steps in aid abolished altogether?

A. No.

Q. Would you make any difference according to the amount of the decree, that is, if a man has a decree for one thousand rupees it seems fairly reasonable that if he gets nothing in six years, he may drop it altogether and if he gets a decree for twelve thousand rupees it is perhaps less unreasonable to give him longer?

A. The interest of the judgment-debtor has to be considered because he may find it difficult to pay up a big decree and if the decree holder is limited to three years or six years he has to take out the execution.

Q. Then with regard to big *ex parte* decrees. If you want to get rid of steps in aid, what limit would you fix for big *ex parte* decrees?

A. I would fix six years.

Q. Yes, give him six years for *ex parte* decrees in all cases—no steps in aid—but in big *ex parte* decrees say of one lakh or more would you like to have 12 years or would you make a distinction?

A. I think I shall make a distinction.

Sir T. Desikachari.—*Q*. In cases of larger value it will take a long time to recover the money and obviously decrees of large amounts will take longer time than decrees of small amounts.

Mr. Justice Stuart.—My experience is that the number of dishonest judgment-debtors is larger than the number of dishonest decree holders. There are dishonest decree holders no doubt but their proportion is 1 to 100 dishonest judgment-debtors.

A. You will have to provide in that case something like steps in aid.

Chairman.—*Q*. Do you think that as a sort of practical compromise, if steps in aid were abolished altogether the period of 12 years could be cut down?

A. If that is done I have no objection.

Q. I see you make a suggestion that the decree holder should have the power to arrest his judgment-debtor anywhere on the basis of an order of arrest passed by the Court to which the decree was transferred or by the court which passed the decree. I am speaking of your answer to No. 17. At present the position is this. The judgment-debtor is in one district, the court which passed the decree is in another district and the court to which the decree is transferred is in a third district and by the time you go to the court which passed the decree he is gone. As regards that would it not be possible to apply to any court on production of a copy of the decree and get an order pending the order of the court which passed the decree what I am suggesting is this. The process will have to be to get an order of arrest from any court and all that you will have to do will be to produce a certified copy of the decree personally, to make out a case that the judgment-debtor is in the neighbourhood or has property there and to swear that the decree has not been satisfied and get an order, pending the order of the court passing the decree, for execution of arrest in the meantime. That is, I think, involved in the matter.

A. Yes.

Mr. Justice Stuart.—*Q*. Is there any objection if the warrant of arrest issued by the court which passed the decree is made executable anywhere within the jurisdiction of the High Court just as a criminal warrant?

A. There can be no objection to that.

Q. The warrant can be executed in any district?

A. Yes. I do not see any harm since the man is brought before the court. If he has paid up the decree he will say so and there will be a case of damages if he has really paid up the decree.

Mr. NARESH CHANDRA SINHA, Representative of the Vakils' Association, Patna High Court.

Written Statement.

1. In my opinion the period reasonably required, having regard to the habits and customs of the people of my province, is stated below:—

A. *(i) High Courts.*

First appeals, one year to two years according to the nature of the case.

Second appeals, (1) in cases in which no paper-book is printed, six months; (2) in cases in which a paper-book is printed, six months to a year.

Miscellaneous appeals, same as in second appeals.

(ii) District and Sub-Courts.

Original suits—

(a) Title, one year.
(b) Money, six months.

Regular appeals, six months.

Civil miscellaneous appeals against orders, three months.

Small causes, two to three months.

(iii) District Munsif's Courts.

Original suits—

(a) Title, six to twelve months.
(b) Money, six months.
(c) Rent, three months.

B. (i) Claim proceedings in execution in District Courts, Sub-Courts and District Munsif's Courts, three months.

2. In a large number of cases the period actually taken now for the disposal of these proceedings exceeds the above limit. The main cause of the delay is paucity of officers. Another cause is the inability of the parties to obtain the attendance of all their witnesses on one and the same day which necessitates applications for adjournment from time to time to secure the presence of all the witnesses.

3. I would suggest the following remedies for shortening the period, namely:—

(1) Appointment of a judicial officer who could do preparatory work in relation to cases such as is done by the Registrar in the Patna High Court.

(2) Insistence on the use of the provisions relating to discovery, inspection and admission of documents.

(3) Stricter supervision of Court peons who are entrusted with service of processes.

(4) Taking personal recognizance from witnesses in attendance to attend on the next date.

(5) Readiness on the part of presiding officers to examine witnesses in attendance when it is represented to them that they are not likely to be present on the next date which may be fixed for hearing.

(6) Larger use of the post office for service of processes in addition to the service through Court peons.

(7) To discourage issue of commissions for ascertainment of mesne profits.

(8) Frequent use of the power to impose fines on witnesses given by Rule 12 of Order 16.

4. The present system of recruiting Munsifs is quite acceptable. But a larger number of the High Court and District Judges should be taken from the Bar and an Indian Civil Service Officer to become a District Judge must first perform the duties of a Munsif for some time, say for six months.

5. Answered in No. 4.

6. Justice is not impeded by the too frequent transfer of judicial officers.

8. The present delay is not due to the concentration of many Civil Courts in one place. Courts have not got to wait for members of the legal profession for more than a few minutes, and this even can be avoided by the Bench clerk informing parties or their pleaders to be ready with the next case sometime before the case then being heard is finished.

9. The answer to this question will be found in answers to Questions Nos. 10, 13 and 16.

10. I would enhance the jurisdiction of District Munsifs in my province so as to embrace original suits of the value of Rs. 2,000 and small causes of the value of Rs. 200. I would also give to selected Munsifs power to try cases up to Rs. 5,000.

12. I do not think it necessary to relieve the District Judge of miscellaneous judicial work in order to give him more time to attend to more important work. He has not got to do much miscellaneous judicial work.

13. I believe the investing of Sub-Judges and District Munsifs with jurisdiction to try probate and succession certificate proceedings and land acquisition proceedings will be acceptable to the public. I would invest all the Subordinate Judges with such powers but not the Munsifs.

14. There are no village courts or panchayats in this province. I would suggest establishment of village courts presided over by three persons to try small causes and rent suits.

16. I am in favour of introducing the summary procedure as contemplated by section 128 (2) (*f*), Civil Procedure Code, in the Lower Courts but only with regard to cases referred to in sub-clause (1) other than cases of trust.

17. The investing of Sub-Registrars with the jurisdiction contemplated in the question is not likely to make for speedy and less costly justice.

18. I do not think that having regard to the present condition of things, the right of appeal is granted in too many cases.

19. I would not curtail the right of appeal under Letters Patent from the judgment of a single Judge. But I would suggest that the practice of hearing a second appeal of a value of below Rs. 1,000 by a single Judge should be discouraged. This would reduce the number of appeals under the Letters Patent.

(*b*) In our High Court no appeal under the Letters Patent is allowed from the order of a single Judge in revision.

20. There are not many frivolous second appeals filed in our High Court. Some second appeals are admitted and ultimately decreed by some Judges which other Judges would have rejected summarily. This introduces an amount of uncertainty as to the advice a vakil is called upon to give as regards the advisability of filing a second appeal and this uncertainty leads to the filing of some so-called frivolous appeals. The Patna High Court is strict in admitting second appeals and consequently not much harm is after all caused by the filing of these appeals.

I would not curtail the right of second appeal.

21. I would not agree to the suggestion that the appellant should be compelled to deposit in full the decretal amount before the second appeal is allowed to be filed. Money is not plentiful in this country and such a

rule will work great hardship. Moreover frivolous second appeals are almost always rejected under Order 41, Rule 11, Civil Procedure Code.

22. The power given under Order 41, Rule 11, is duly and systematically exercised in second and miscellaneous appeals in the High Court, but seldom in the District Courts. I would suggest that that power should be exercised in the District Courts as well in respect of miscellaneous and rent appeals.

23. I do not think that the right of application in revision to the High Courts is much abused. I am opposed to the suggestion that in cases of revision under the Provincial Small Cause Courts Act the decretal amount should be deposited in Court, for reasons similar to those given in answer to Question No. 21. Nor would I prohibit petitions for revision of interlocutory orders, inasmuch as many a time they serve a very useful purpose by preventing wholly unnecessary subsequent proceedings, which take up a great deal of time of the Courts and cause the parties much worry and expense. Moreover, the High Court is generally very reluctant to interfere with interlocutory orders except where but for such interference grave injustice is apprehended.

24. The answer to this question will be found in the previous and succeeding answers.

25. I would suggest that in addition to service through Court peons processes should always be served by registered post. Application of the procedure under section 106, Transfer of Property Act, to civil suits is not desirable.

26. The forms of plaint given in the Civil Procedure Code are not adhered to generally. Very often matter of evidence is introduced into the pleadings. This, however, does not cause much harm to anybody and sometimes helps the other party in ascertaining the case of the party pleading more fully. But the more serious defect is that particulars of fraud, undue influence and coercion and the like are many a time not given. I would suggest that Courts should have the power to compel the party so pleading to supply the particulars either of its own motion or on the application of the other party and to refuse to take cognisance of that part of the case if the order to supply particulars is not complied with within the time fixed. This object could also be achieved if Courts were to give more attention to the framing of issues and examination of pleadings in connection therewith and to refuse to frame the issue upon the point unless the particulars are so given. In practice the framing of issues is treated as a formal matter and Courts are reluctant to examine the pleadings and understand them thoroughly at that stage of the case with the result that unnecessary issues are framed and unnecessary evidence adduced on those issues.

27. The provision of Orders 7 and 8 of the Code of Civil Procedure are much neglected in this province.

28. I think that the more extensive use of the post office for the service of notices and summonses will be effective.

In the absence of an identifier the village chowkidar should always be requisitioned by the Court peon for the purpose of identification, when acting as identifier the village chowkidar should be required to make a verified statement of such identification and service on a form to be specially prescribed therefor. The filing of affidavits of service by the party or his servant has become a mere form, is no effective safeguard against suppression of processes and should be dispensed with. Such affidavits have been dispensed with by the Patna High Court with regard to cases in the High Court.

29. It is not advisable to require the parties to give a registered address service at which should be deemed to be good service for all the purposes of the suit and execution.

30. It is desirable that the process-server should always report himself to the pleader of the party on whose behalf he is taking out a process for service.

31. See answer No. 26.

32. The provisions of Orders 10, 11 and 12 of the Code as regards the examination of parties, discovery and admission of documents are seldom resorted to in this province.

This neglect of the provisions of Orders 10, 11 and 12 of the Code is due to the fact that suitors very seldom seek the advice of their lawyers with regard to evidence that they should call, and consequently the lawyers know very little about the case in its earlier stages, and are unable to offer advice.

I would suggest that as soon as the issues are framed Courts should be required to call the attention of the parties or their pleaders to the provisions of Orders 11 and 12 of the Code and take steps in connection therewith within a time to be fixed by the Court.

33. Yes, the examination of both parties not merely with a view to ascertaining what the points in controversy are at the first hearing, but as part of the trial at the beginning of it, before any witnesses are examined, will tend to minimise the calling of irrelevant evidence and unnecessary witnesses.

I would not agree to the suggestion that it is only after the examination of the parties in that form, that any steps for the summoning of witnesses should be taken.

34. The provision in Order 16, Rule 16, clause (1) is not strictly enforced in this province. This is due largely to the uncertainty whether the case will be heard at all on the next date fixed for hearing.

35. It is not correct to say that much unnecessary and avoidable oral evidence is let in the Courts in this province in any appreciable number of cases. On the other hand, in the majority of cases there is paucity of oral evidence due mainly to the inability of the parties to secure the attendance of all the necessary witnesses on the date on which their case may by chance come to be heard.

36. I would accept the suggestion that in enquiries into claims, succession certificate proceedings, proceedings for removing an obstruction to delivery of property, as also in *ex parte* proceedings, affidavit should be the primary mode of proof, and no oral evidence should be allowed except with the special leave of the Court. I would not, however, make such a rule applicable to all cases in which there is no right of appeal nor would make prepayment of special costs a condition precedent.

37. I would strongly object to the suggestion that Courts should have a discretion to fix a time-limit for examination and cross-examination of witnesses. The Court has ample power to disallow irrelevant questions. There is not much irrelevant cross-examination of witnesses, examined in Courts: unnecessary cross-examination is almost always held before commissioners.

38. I would not extend the application of Order 37, Civil Procedure Code.

39. The principle of representative suits cannot be made of wider application.

40. It is not desirable to throw the duty on a legal representative to come forward and request the Court to add him as a party on pain of his being bound by the decree in case he was aware of the proceedings.

41. There is not much delay caused in the Courts of this province in appointing a proper guardian *ad litem.*

The suggestion that instead of successive petitions being filed, as each proposed guardian refuses to act, the plaintiff or appellant should be made to name all the possible guardians in one petition and notice should be ordered to go to them simultaneously and the Court should appoint at the hearing of the petition the one best fitted to safeguard the interests of the minor, is a good one.

42. There is no serious complaint that undue advantage is taken of the practice of granting *ex parte* injunctions and orders.

43. Judgments in this province are *not* unduly long in any appreciable number of cases.

44. Points of law going to the root of the claim or defence are not usually disposed of before taking evidence in this province.

45. Pleaders are usually consulted by the Courts in fixing the time required for arguments but seldom regarding examination of witnesses.

46. Dates for original or adjourned hearing are not fixed by Judges themselves. This, however, does not lead to delay in disposal.

47. Trials are sometimes but not frequently delayed by the examination of witnesses on commission. This delay may be avoided by the Court examining the witness itself if the witness is at the headquarters but unable to attend the Court on account of illness or *parda;* and in other cases by issuing commission for examination as far as practicable to Courts within whose jurisdiction the witness resides at that time instead of issuing it to a pleader. The Judge should, moreover, have power to award costs against a party indulging in unnecessarily lengthy cross-examination before a commissioner.

I would not insist on written interrogatories.

48. Insistence on written applications supported by affidavits for adjournment is not likely to be of effect in speeding up work.

The amount of day costs which are allowed on application for adjournment are not always sufficient to prevent frivolous applications, but I may be allowed to point out that frivolous applications for adjournment are not very common and are many a time the result of the inability of the party to secure the attendance of all his witnesses on one and the same day.

49. In this province suits are generally tried continuously day by day.

51. Commercial suits are not common in this province and no system of giving special expedition to such cases is therefore necessary.

52. The amendments which I would suggest in the procedure for obtaining execution of decrees are indicated in my answers to Questions Nos. 53, 54, 55, 58, 59, 60, 61, 63 and 64.

53. I would like that the principle of section 21, Civil Procedure Code, should be extended to proceedings in execution, although this will not affect any appreciable number of cases.

54. There is no objection to investing of Courts to which a decree is transferred for execution with the powers which the Court which passed the decree has, as to adding of legal representatives, recognition of assignments of the decree, transfer for execution and similar matters. The suggestion is a good one.

55. The language of section 47 may be safely modified so as to include proceedings taken by stranger purchaser at a Court sale to obtain delivery of the property which he has purchased.

56. (*a*) The period prescribed by section 48, Civil Procedure Code, should not be curtailed. Such a course will only make judgment-debtors all the more determined to delay execution in the hope that after the expiry of the proposed six years the decree may become barred.

(*b*) and (*c*) Article 182 of the Limitation Act should not be amended in the way suggested except in respect of the starting point which should be taken to be the last order on the last application.

57. I approve of the suggestion to alter section 66, Civil Procedure Code, so as to prevent any party to the suit in execution of which sale

took place from saying that the apparent purchaser is not the real purchaser and any one from setting up such a plea. I would, however, make no exception in favour of the creditor of the real purchaser.

58. The suggestion made to alter Order 21, Rules 1 and 2, in such a manner as to restrict pleas of payment out of Court, to payment through post office or registered bank or the vakil of the party to whom the payment is made or in the presence of the Sub-Registrar, is a good one.

59. It is desirable to allow the transferee of a decree to have execution on proof of the transfer by means of an affidavit pending issue of a notice to the transferor.

Deletion of the second proviso to Rule 16 of Order 21 will work hardship because a joint decree does not determine the liability of the judgment-debtors *inter se* and many times in an enquiry into liability for contribution it is found that some of the judgment-debtors are not liable to the rest.

60. There is no objection to the deletion of Rule 21 of Order 21 altogether. The change is rather a desirable one.

61. No notice under clause (*a*) of Rule 22 of Order 21 is necessary. A notice under clause (*b*) is, however, desirable but it may be made a part of the notice of the execution petition in which the substantial relief is asked for.

62. Yes, a provision in Rule 26 of Order 21 that there shall be no interim stay in the case of money decrees will work hardship. I would, however, agree that in the case of money decrees. the proviso of Order 21, Rule 26, should be modified so as to give a greater discretion to the Court.

63. There is no necessity for special notices in the different stages of execution proceedings in the case of money decrees sought to be executed by the sale of immoveable properties. Nor is there, in my opinion, necessity for such notices even in the case of mortgage decrees. It will be enough if the judgment-debtors are given one notice at the beginning and are subsequently informed of the date fixed for sale.

64. I am in favour of a rule that in all cases the judgment-debtor should be served with a copy of the proclamation of sale.

It is not desirable that writs of attachment and sale proclamation should issue simultaneously but at the same time it is certainly desirable that the notice under the proviso to Rule 16, clause (1), Rule 22, the writ of attachment and the notice under Rule 66 of Order 21 be issued all at once.

A rule that notice of execution petition may be served on the vakil who appeared for the judgment-debtor in the suit, is not desirable.

65. I would not approve of the system of the execution of arrest warrants by village officials. As a matter of fact there are no village officials in Bihar except the choukidar.

66. I would not make any suggestion for so altering the present procedure as regards mortgage suits as to make the sale in execution of a mortgage decree clothe the purchaser with a right to the property free from future litigation except as indicated below. I would accept the suggestion—

(*a*) That with the plaint the plaintiff should file an incumbrance certificate.

(*b*) That the persons whose names appear in such incumbrance certificate or their legal representatives should, as a rule, be made parties and that failure to do so should make the suit liable to dismissal for non-joinder of parties.

(*c*) That all parties to the suit should be allowed to plead their rights to the mortgaged properties and that such right should be finally determined in that suit.

(*d*) That no period of grace is necessary.

It is, however, not desirable to force prior incumbrancers to participate in the sale without their consent.

There is no necessity for a final decree in simple mortgage suits nor is there any necessity to have a separate personal decree where the security has been exhausted.

67. There is not much delay caused in the disposal of execution proceedings by orders staying such proceedings made by the Appellate Courts. I would not invest the Appellate Courts with jurisdiction to award exemplary compensation as suggested in this question.

68. I would curtail the power of co-ordinate or inferior Courts to grant injunctions to stay execution of other Court's decree by laying down that such injunctions shall not, except for special reasons, be granted unless sufficient security is given.

70. Execution proceedings are frequently delayed by absconding judgment-debtors. Arrest before judgment is unknown. Attachment before judgment does prevent delays. I would suggest that decree-holders should be given the right to seek execution both by arrest and sale of property at the same time.

71. No amendment in the law of evidence is necessary except as indicated in my answers to Questions Nos. 72 and 73.

72. It is not necessary to retain the provision that the plaintiff in a mortgage suit must call an attesting witness; but valid attestation in case execution is proved may be presumed in case of registered mortgage bonds.

73. It is desirable to allow the parties to consent to secondary evidence being given in any form.

74. The law of limitation may be made more stringent by so altering section 20 as to place payment of interest on the same footing as payment of principal.

76. It is not desirable to make partitions of immoveable property compulsorily registrable.

78. The doctrine of part-performance should not be allowed scope in the country so as to practically nullify the provisions of the Transfer of Property Act and the Registration Act.

79. I would not approve of a rule that the discharge of obligations created by registered documents should be only evidenced by registered documents.

80. I am not in favour of a rule that no Court should entertain a plea that any party executed a document unless it is registered, in the case of persons who cannot sign their names. But the making of finger-impression should be insisted on in such cases.

81. Yes, I agree that the plea of *Benami* should be done away with. Such a rule will assist in realization of the fruits of a decree speedily and reduce litigation to a very large extent.

82. I do not think that it is desirable to attempt to put down frivolous suits by enhancing the rates of Court fees.

83. It is necessary to retain the provision that a mortgage deed should be attested.

84. Champerty and maintenance are not common in this province and I would not make any suggestion to prevent them.

85. No, I would not give to the Court power to refer any cases to referees.

86. I do not consider that multiplication of law reports has interfered with speedy justice.

87. I do not think that further codification of law is desirable.

Mr. NARESH CHANDRA SINHA, Representative, Vakils' Association, Patna High Court, called and examined on Wednesday the 9th July 1924.

Chairman.—You are Mr. Sinha?

A. Yes.

Q. You are representing the Vakils' Association of this High Court.

A. Yes.

Q. I suppose you know the ordinary training that is given to the pleader in a District Court?

A: Yes. I myself practised for some time in the District Court.

Q. I understand it consists of taking the LL.B. degree at the University.

A. Yes.

Q. The Bachelor of Laws degree is taken after the Arts degree.

A. Yes.

Q. Eyerbody is a B. A. before he begins his B. L. course.

A. Yes.

Q. How long does an ordinary man take to get his Law degree when he once takes to study law?

A. Three years.

Q. What he gets, I take it, is a good deal of theoretical law. I mean he gets probably stiff examinations in Hindu Law, the Code of Criminal Procedure and the Code of Civil Procedure.

A. Yes.

Q. I think it is not practicable to give him more than an academic knowledge of the Code of Civil Procedure.

A. Yes.

Q. The result is that most people here, as most people in England, get a working knowledge of the procedure after they are admitted to the Bar.

A. Yes.

Q. But, in order to get a working knowledge, is it not necessary that there should be some systematic study of a more practical kind than a man gets merely when he is a student?

A. I think so.

Q. Can you tell me up to what extent in this province in the mofussil bar senior men in good practice let juniors work with them or for them so as to gain experience?

A. Yes, to every senior pleader are attached a number of juniors.

Q. Do they pay for the privilege or does he pay them? What is the arrangement?

A. No payment on either side.

Q. I suppose sometimes if a client engages two pleaders, the junior may get something from the senior in that way.

A. Yes.

Q. Speaking of the province as a whole, is that system of practising with senior people so well organized and so systematic that the junior pleader does get a good practical training in a couple of years or so?

A. Not always, because many of them don't get an opportunity to attach themselves to senior pleaders. There is no room for all of them.

Q. The people in good practice can't have all the people coming along and I dare say when they once get a pretty good man, they try to keep him with them for 5 or 6 years.

A. Yes. But, as soon as the junior pleader gets into some practice, he sets up independent practice.

Q. Would it be a hardship or would it be an improvement if some arrangement was made for examining in a practical way young pleaders, say, after a year or two at the Bar in such things as drafting pleadings, settling interrogatories and the sort of a thing that a man ought to learn in chambers?

A. Yes. I think it would be an improvement, just as they have it in the High Court.

Q. Do you think there will be very strong feeling against requiring the man to sit for another examination after he had qualified himself to become a member of the Bar?

A. If the examination is not very stiff, it would certainly be useful and there will be no objection, because that would be decidedly an improvement.

Q. I suppose it would not be possible in an ordinary Sadar station to provide anything in the way of practical lectures for young pleaders.

A. No.

Q. All that you can do would be to expect them to make use of their first year's time.

A. Yes, practically chamber work.

Q. As regards the opening of cases in a mofussil court, utilising the orders about discovery and admission and interrogatories, don't you think that something might be done to require these things to be carried out in the mofussil?

A. Yes.

Q. Is your Bar in favour of opening cases?

A. Yes. But as a matter of fact in the mofussil cases are hardly opened except in big cases.

Q. I understand the difficulty is that he gets very scrappy instructions.

A. Certainly he gets them only at the last moment.

Q. He does not really know what his case is or with what evidence he is going to prove it and sometimes his opening would rather display the badness of his instructions.

A. It is not generally in every case but only in big cases.

Q. Is there any way in which you could make the opening of a case more practicable and more useful having regard to the bad state of preparation of cases?

A. I believe if the provisions regarding interrogatories and discovery are more largely resorted to, at the earlier stages, then the pleader will know more about the case and will be in a better position. As regards discovery and interrogatories if the court disallows costs to the party who could have proved his case by serving interrogatories or by inspection of documents but has not done so, then something might be done.

Q. Is it because the pleader is not properly paid that he takes no trouble to advise his clients as to interrogatories and so on?

A. No. They don't get any lump sum. They get extra fees for all interrogatory matters. Generally a fee for every work is paid.

Q. A pleader is engaged only to draft written statement and submit it in court. Then he is not engaged. The party goes in for another pleader in the meantime. How could you bring about the state of affairs that the pleader, after settlement of issues should be properly paid and he should be paid to attend to that case doing everything himself?

A. It is not possible. Unless the habit of the litigants is changed, I don't think that there is any remedy for that.

Q. But you can not expect a pleader to be worrying in his own time about the interrogatories?

A. Yes. The litigant is almost ignorant of the provisions regarding interrogatories. Perhaps the only way would be to make the judge go into the matter better and that would also assist the parties, regarding interrogatories, and discoveries.

Q. Now these are the main points about actual trial. Have you really any difficulty about the people cross-examining for a ridiculous length of time?

A. Sometimes. But all depends upon the personality of the Judges.

Q. So far as examination is concerned there is waste of time. As regards cross-examination is it bad enough to make it necessary to introduce a change in the Law? I mean, giving Judges power to shut down cross-examination more than what they have in this province?

A. Mostly there are big cases, where there may be too many witnesses. It depends upon the pleader cross-examining and the Judge. Some pleaders cross examine for hours together and if the judge be weak he does not stop him, but to stop, the Judge has sufficient power. He has sufficient power to disallow irrelevant questions also. If he is a strong Judge he may curtail the examination. It also depends upon the nature of the Counsel. If the suit is in a Subordinate Judge's Court it takes an inordinate length of time.

Q. How is it? Is that because the Subordinate Judges expect more?

A. No. It depends, possibly on the suit.

Q. Now, tell me, apart from that, is there inordinate delay caused by commissioners and is that really difficult?

A. There it is really difficult. The witnesses are to be examined in a town where there is a Court. The Court itself should examine, if possible, witnesses, and should insist, so far as possible, that they should come to headquarters and examine them there.

Q. Could you utilise the better senior type of men for commissioners. Now they have young pleaders, with very little experience. Can you get commissioners with power to disallow questions?

A. He does not know much of the case, and will have to depend upon the documentary notes. If you could get good men, it may be in many cases, they would dispose of the matter more easily.

Q. What about pleadings under this section?

A. My experience in Bihar is that evidence is called for many days, but they don't give enough particulars as they ought to give.

Q. At the time of the written statement are the parties given some little time for the settling of the issues, and is it adjourned say for a week?

A. Yes, they adjourn it for some time.

Q. And that of course is the time at which the pleader on either side ought to ask for such particulars as he wants. The Judge ought to explain that it is so.

A. Yes. Some Munsifs state issues as soon as written statements are filed.

Q. Have you any objection to the transfer of some cases from the District Judge to Sub-ordinate Judges?

A. No. In acquisition cases, probate and succession certificate proceedings this may be done.

Q. Do you think that Munsifs could do some such work?

A. Munsifs to a limited extent. Subordinate Judges could do that.

Sir T. Desikachari.—*Q.* Then the only difficulty is administration?

A. Yes. If a Registrar is appointed that difficulty will vanish.

Chairman.—*Q.* As regards estates being administered, do you think it would be possible to leave the actual administration work of the estate to district officers and not to judicial officers? Even from their own admission it is evident that even quite good judicial officers are not good administrators of a zamindari.

A. It might be entrusted to revenue officers.

Mr. Justice Stuart.—It is the case in other provinces too. When a District Judge gets anything which he can call an estate say three or four villages, it is easily arranged when he hands over the administration to the Collector.

A. Here it is not the case. I know one case when the District Judge at Bhagalpur handed over the estate to the Collector to manage it under a District Judge.

Chairman.—*Q.* There is no difficulty about management. The estate can be leased out to other proprietors and the Collector has simply to supervise. Assuming that in a case like that a large estate is leased out to small tenants how do the parties bid? Do they bid more than really they can pay with the result that the tenants are rather oppressed?

A. No.

Sir T. Desikachari.—*Q.* Under the Religious Endowment Act is there any objection under section 18?

A. No. Not under the Act but under section 92.

Chairman.—*Q.* Coming to the suggestion of a registrar would you agree to have another man, call him by whatever name, in order to get a unified office serving all the courts at a central station?

A. Yes, that is a good idea.

Q. They should not be merely a sort of personal assistant to the District Judge, but a Registrar with a unified office with time to look after the office.

A. Yes.

Mr. Justice Stuart.—*Q.* You say a Registrar. There might be two registrars in a large district, where one would be a personal assistant to the District Judge and the other would be more as a Registrar in an English County? Don't you think it is also necessary to relieve the District Judge of a large amount of his routine work?

A. Some of it will go to the Registrar.

Chairman.—*Q.* What do you think of the present system?

A. There is no responsibility in the work under the present system.

Q. I suppose you could tell us the practice here as regards first appeals as to the printing of books. As I understand cases are only printed in Privy Council form if they are likely to go there and if they are over Rs. 10,000. As regards first appeals over 5,000 but not over 10,000, what is the practice in your court?

A. Paper books are printed generally locally by the High Court office. Formerly they used to be in the same form as the Privy Council but now they are not.

Q. I want you to appreciate what the difference is? The Privy Council lays down that papers are to be printed in a certain order.

A. There is no difference as regards that. The difference is only in shape.

Q. But apart from the form is there any difference in principle?

A. I do not think that there is any difference. As regards Privy Council cases they print each document separately. If a document is finished in the middle of the page they do not print on that page anything else.

Q. Now as regards first appeals you endeavour to print everything that may possibly have to be referred to?

A. Yes.

Q. And I understand that if you do not, you have to give notice to the other side and have to wait and see whether the court would give you leave. I think the court generally gives you leave.

A. Yes.

Q. As I understand in some cases a great many formal documents are printed when all that is wanted is the heading of the column.

A. Yes.

Q. Can you help us to put that down? The Privy Council, in their rules, have got a very strict injunction that the registrar should be on the look out that unnecessary documents are not printed. We understand that the Privy Council refused to look an appeal from the Lahore High Court till they had taken all the papers and torn out about 150 pages and then they made a proper order as to costs and made some remarks. It seems that for some reason or other people love printing unnecessary numbers of pages.

A. So far as this court is concerned there has been a great improvement. I was also in the Calcutta High Court and there they used to print a large amount of papers which were absolutely unnecessary; for instance to prove your possession you have to print one or two receipts but there they used to print the whole of the *juma-bandi*. Here there is a vast improvement and whenever the matter comes before a registrar he looks into that.

Q. Does the registrar apply his mind and really settle the list of the documents to be printed, or do they print the whole thing?

A. If there is no objection they print the whole thing. As a matter of fact, I was there yesterday and I found that there was an objection in one case. One pleader wanted to have 200 rent receipts printed whereas the registrar printed only the first and the last.

Q. That was a case where the other man took objection?

A. Yes.

Q. Are you sometimes questioned by the respondent that appellant has not printed this or that, which he ought to have printed?

A. The rule is that the appellant must print not only his papers but also other papers upon which the decision of the case depends.

Q. Would you have any objection if it is laid down that it should be the duty of somebody, the registrar or at any rate some senior person, to examine the question of unnecessary printing, so that the registrar may pass orders upon the matter to keep down foolish printing of papers?

A. That would be very good. Of course unnecessary papers are printed and sometime the court does not allow cost for that.

Q. Has your court made such orders?

A. Yes. When unnecessary papers are printed no cost is allowed for that.

Q. Have you had it suggested that it would be better if Rs. 5,000 limit is raised and that appeals should go to the District Judge and second appeal to the High Court? Is there any demand for any change of that sort?

A. No.

Q. You would prefer to leave it at Rs. 5,000?

A. Yes.

Q. At present it goes to the High Court both on facts and law and it has the advantage of eliminating an appealing stage which may last for three years?

A. Yes.

Q. The disadvantage is that printing for first appeal is very costly and that you print nothing before the District Judge and therefore people might get it decided cheaper?

A. One of the remedies would be to reduce the cost of printing.

Q. Do you not think that if the bulk of papers is printed, the things which only require occasional reference and a short amount of attention might not be printed at all?

A. So far as certain kinds of papers are concerned, for example *juma-bandi*, only extracts may be printed. They should not be eliminated altogether but extracts from them should be printed to give an idea of the whole thing.

Mr. Justice Stuart.—*Q.* Take the question of evidence. You know in some cases the printed evidence exceeds 300 pages. Would it not be possible to ask the counsel as to what evidence of the witnesses he is going to refer? There may be 80 or 90 witnesses whose evidence would never be referred to.

A. It is very difficult. Unless you read the whole of the evidence, you cannot be in a position to say as to what should be printed.

Q. Would there not be a saving of money and time if people do that?

A. There may be a saving of time and money but there are various difficulties. Most of the first appeals come to seniors and the list is prepared by juniors who say as to what should be printed and what should not be printed.

Q. That is the root of the whole evil, that there is no consultation between the junior and the senior. It is done in England.

A. So far as first appeals are concerned I do not know what benefit there will be in consultation between the junior and the senior.

Chairman.—As a matter of fact, in India I take it the paper book when it is printed serves as a brief practically to the senior man. He gets his instructions from it, but if you are to provide him with copies of the whole proceedings beforehand, it will be a matter of very considerable expense.

A. There is one difficulty which I feel and it is this. When the case is argued, many questions arise in almost all cases out of discussions between the judge and the counsel which were not thought of before. Therefore it is better to have the whole of the paper book printed because in its absence references have to be made to the original records.

Q. As regards second appeals, I suppose, you know that a great bulk of the second appeals in this court are of very small valuation and a large number of them are small matters under the Rent Law, and there are other matters also. I suppose those that are below Rs. 500 in value are something like 70 per cent.

A. Yes.

Q. One understands easily enough in India that a small valuation does not necessarily mean an unimportant case. It may be of great importance first of all to the parties and one understands too that there is a point of law that requires careful attention because a bad decision gives a lot of trouble. Our present method is that we let in every case whether it is really important or not. We let them all come in without any discrimination between cases that require a third hearing and cases in which the third trial is an abuse.

A. You cannot draw a line because a small bit of land or a small variation in rent, however small, may be of greater importance to the poor tenant than to the proprietor.

Q. That is perfectly true, but still it is an exaggeration to say that the bulk of small cases really ought to have three hearings. In India the trial of a case instituted by a man takes about a year or nine months, then he files an appeal which may also take nine months or a year and then comes the second appeal involving points of law which, if it is allowed at all, will go on for two years?

A. Well in India it is rather very necessary because a small bit of land may be of very great importance to the tenant.

Q. I know. It makes him litigate anything and everything. Unless it is really impossible to find out a case where justice requires a third hearing, where it does not it is rather tragic that so many second appeals should be allowed when the proportion of success is so small as it is?

A. Many of them are dismissed outright as soon as they are filed. It entails no hardship. I think it is a sufficient safeguard. The registrar does this work. These appeals pass through him, and then, if necessary, they come to the bench.

Q. How do you find Order 41, Rule 11, is working here in Patna? I think if there is a point of law, it is admitted.

A. No, not merely a point of law, but a substantial point of law.

Q. Does it always require a substantial point of law?

A. Yes. It does not require a simple point of law, but a substantial point of law.

Q. Do you think that the judges work it all right? Do you believe in the way in which some judges work it? Do they admit appeals if there is a simple point of law?

A. Not here in Patna. In Calcutta in old days especially I found that some judges seemed to admit these appeals rather more lavishly. But there it was a case of extreme latitude. Here in Patna we have got almost one uniform system. All these appeals first go to the registrar and, if the registrar does not admit, they go to the bench and generally before a particular bench for some time. There is one uniform system here.

Q. Of these admitted under Order 41, Rule 11, have you any idea of the proportion of success?

A. I think 10 per cent. judgments were reversed outright and there may be 10 per cent. to 20 per cent. of cases in which there was a remand. In small cases raising points of law, there is the first appeal, then the second appeal and there may be a Letters Patent appeal and then there may be a remand. I would suggest that the hearing of appeals by a single judge should be done away with because 50 per cent. of these cases are appealed to under the Letters Patent. The Chief Justice and other Judges hear Letters Patent appeals. They are first put up for preliminary hearing and some of these cases are dismissed outright, but some pass through the preliminary hearing and they are finally heard. To obviate this double hearing, so far as possible hearing by single Judges should be dispensed with.

Dr. DeSouza.—There were 34 Letters Patent appeals last year.

A. Last year the single Judge did not sit for a long time. He sat for a little period.

Q. The figure which I have given relates to 1922.

A. I believe it was much larger before that. In former years I have seen the number rising to or over 100. The single Judge used to sit for a longer period.

Chairman.—*Q*. What I want to suggest is that if you look to India as a whole, it is impracticable that on the civil side single Judges should not be used at all. Some High Courts could not manage their work at all. At this moment in Burma, single Judges hear appeals up to Rs. 3,000 and by the Burma Letters Patent there is no Letters Patent appeal except on certificate. I am suggesting that it should be applied in Bengal and Bihar.

A. There is no reason why these cases should not be tried by two judges. As a matter of fact I find so many of these judgments set aside.

Q. Have you ever thought of India as a whole why small cases should not be tried by a single Judge. For instance let us take criminal work in Burma it is being done by a single Judge; so in Punjab except for transportation for life, and so on in other Provinces. What is the principle that, when it comes to civil work, even in small cases it requires two Judges to do justice?

A. As a matter of fact in criminal cases here, cases of imprisonment up to six months, are tried by two Judges.

Q. Looking at India as a whole, don't you think that we in Bengal and Bihar have got rather large notions of the rights of a small appellant to have his case tried by a Bench?

A. I would rather think that in some of the other provinces the people have got a narrower notion.

Q. Would you be content to say this—that every time a case comes to the High Court, the High Court should make up its mind one way or another—if it is necessary to try it by two Judges, finish it and if it is a case that can be tried by one Judge, for God's sake, finish it. Is not that reasonable?

A. Yes. He can ask and that is often asked.

Q. If there is anything in the request, it is generally granted.

A. Yes.

Q. Don't you think that this whole business of giving a man a third and fourth trial in order to get a final decision from the High Court is an execrable method?

A. There should be no fourth trial. So far as Bihar is concerned the difference is not much. As Mr. James said, the difference is 30 cases. There is no practical difficulty here. The single Judge, here, I believe has not more than 100 cases.

Dr. DeSouza.—*Q.* What is the limit here for a single Judge's jurisdiction?

A. Rs. 500. It has recently been raised to Rs. 1,000.

Mr. Justice Stuart.—*Q.* Do you mean to say that there are only 100 cases?

A. There are great many more. But many cases are not tried by the single Judge himself. Cases under Rs. 500 ordinarily go to a Bench.

Sir T. Desikachari.—*Q.* I find that 480 of the appeals are summarily rejected. By whom are they rejected?

A. By a Bench.

Chairman.—*Q.* Do you find as a rule that you do get a less satisfactory hearing before a single Judge who is taking all the responsibility than you do before two Judges sharing the responsibility?

A. Two heads are better than one. They hold consultation among themselves.

Q. You agree with me that Letters Patent appeals that are brought into the High Court are brought generally after getting the views of the High Court practitioners.

A. Yes.

Q. The other appeals are often brought after getting the opinion of a junior practitioner of the District Court.

A. Not necessarily on the views of the District Court practitioners.

Q. I mean that the average number of appeals brought depends not only on the judgment but it also depends on the discrimination and care with which the Bar selects cases to bring in appeal; and when 40 to 50 per cent. of the second appeals are kept out under Order XLI, Rule 11, then the number of successful second appeals would be very small compared to the total. But in Letters Patent appeals where nobody brings the appeal unless upon pretty good advice, you would expect a higher proportion of successful second appeals. Is not the proportion of the successful second appeals rather low to the total number brought?

A. I am not really depending upon figures. I have really felt that Letters Patent appeals are better disposed of.

Q. Now about the revision. You see the damages done by the revisional jurisdiction. Presumably its final interference does good in lower courts. They take very long time. Is it not possible in Bihar for example, to insist upon its expedition? It seems it takes six months. Is there any real reason why it should not be done before a month?

A. Yes, it may be done. I should think, even 15 days are enough. I used to find it within 15 days. Bihar has improved a great deal in that respect.

Q. Don't you think that a month is very reasonable time for a man to prepare himself, if so ordered?

A. Oh, yes.

Q. I have seen reports that it used to take six months. What is the cause for that?

A. So far as this province is concerned there is not much difficulty about it.

Q. I gather that you are not in favour of the view that section 115 should not be applied to interlocutory orders?

A. Yes.

Q. As a matter of fact, in your experience, in the District Court, do you find that cases are hung up unduly until rules are disposed of by the High Court?

A. The High Court have issued very few rules.

Q. Do you think it possible in any way to speed up execution matters either on first appeal or second appeal?

A. It all depends upon the stay order. Sometimes it happens in these execution cases, as a matter of fact, that the judgment-debtor makes a lot of delay in the proceedings in execution cases.

Q. Have you any suggestion to get over that?

A. Judgment-debtors have various troubles and there is no remedy. So far as appeals are concerned, they should be allowed because a great deal of matter concerning them arises.

Q. Between the parties to the decree is appealing necessary?

A. Yes.

Q. Now take section 47. Between parties to the decree, if a party has had a decree against him is not that rather a stronger case than usual for making him responsible for giving security?

A. There would be the difficulty that the application may be barred by limitation. That will prevent justice being done. A decree-holder can execute his decree when there is no stay of execution.

Q. Even if the party never gets stay of execution except on terms, is it always practicable to sell when an appeal is pending?

A. Yes. He can sell.

Q. What price is he going to get?

A. If it is a third party purchaser the sale will not be set aside. If the decree-holder purchases the sale will be set aside.

Q. Third party knows that there is an appeal in which the judgment-debtor is attacking the decree. Would he be safe in buying it?

A. If he has the knowledge then it would not be safe. It must be a *bonâ fide* purchase.

Q. Now claim cases. What is the practice in this province? Does he usually get a stay of execution?

A. Sometimes he gets a stay and an injunction.

Q. And the suit under Rule 63 goes on. He can bring Rs. 10 court fee and the debtor can put up all his relatives to bring a suit?

A. On the material before it the court has to decide if it is really a *bonâ fide* one. If it is not *bonâ fide* then the court need not give an injunction. Discretion is to be given to the judge.

Mr. Justice Stuart.—*Q*. I have seen a case at Agra where a property could not be sold at the end of 20 years. Every time the debtor brought up another relative to bring a suit.

A. The court should not take this case into consideration. Discretion should be given to the court.

Chairman.—*Q*. Tell me in such cases do they grant an order to recover the mesne profits? Do they take any care for the decree-holder at all?

A. I don't think they do. One thing more I wish to ask. This Committee is the Civil Justice Committee and it embraces an enquiry into the delay in civil cases. Now there is apart of this province called the Santal Parganas. It has six sub-divisions or districts with a population of about 30 lacs. About 7 or 8 lacs of these are aborigines and the rest civilized being mostly Hindus and some Muhammadans. Portions are Bengali speaking or Hindi speaking. Administration of justice is carried on in this province by two different courts. (1) Courts established under Act 12, 1887. (2) Courts under Act 39, 1885, established under the authority of the Lieutenant-Governor. They try suits up to the value of Rs. 1,000 and less. The appeal in these cases goes to the Commissioner of Bhagalpur. Cases over 1,000 are tried by subordinate judges just as in the regulation districts and the appeal is to the Deputy Commissioner and the District Judge and then finally to the High Court. Each District has a Sub-Divisional Officer invested with the powers of a Subordinate Judge under Regulations 5, 1883. As an officer appointed by the Lieutenant-Governor he tries suits up to 1,000 against Deputy Collector's decisions and administrations, looks after appeals governing suits. There is a great deal of delay in these courts. In the days when I was there it used to take 7 or even 8 years. These Subordinate Judges are sometimes taken out in the mofussil miles away in the hills and one instance 53 miles. That causes great inconvenience. As 99 per cent. of these cases are between non-aborigines it will be good if whole-time Subordinate Judges could be appointed.

Q. As regards this question has that been noticed in the local council?

A. The local council is making a Santal Parganas regulation. Some regulations have been passed but so far as the administration of civil justice is concerned not much was done. Circulars are now issued to try these cases at the headquarters as far as possible and to try them as speedily as they can. But for sometime past there has been great accumulation of work.

Sir T. Desikachari.—*Q*. Are there settlement officers still?

A. Settlement is still going on in some parts. Cases relating to land can be tried in these courts. There is not much delay in settlement courts.

Q. It is not much use our recommending the same thing, if already it has been put up to the Local Government and they for any definite reason have expressed an opinion that the door is shut.

Mr. Sinha.—As regards administration of civil justice it has never been properly stated.

Q. At any rate if we think fit to recommend we have no reason to apprehend that the Local Government would not consider it on its merits.

A. No.

Q. It is no question of anything except efficiency.

A. Yes.

Mr. Justice Stuart.—Then separate arrangements will have to be made.

A. As a matter of fact recently I think another case is before the Privy Council. It is a difficult case relating to underground rights of coal-field. Coal cases are always important. Lately it had to be transferred to Bhagalpur and it was valued at rupees ten lakhs.

Sir T. Desikâchari.—*Q*. What is your proposal?

A. That there should be a whole time Subordinate Judge for the whole of Santal Parganas, or if necessary there should be an itinerant Subordinate Judge who may sit at Bogar and Raj Mahal.

Q. Subordinate Judges under the Civil Court Act?

A. Yes. Sub-Divisional Officer hears these cases as Civil Court Officer.

THE CENTRAL PROVINCES AND BERAR.

Evidence recorded at Nagpur.

PRESENT:

The Hon'ble Mr. Justice G. C. Rankin, Bar.-at-Law, Chairman.

	Co-opted Members.
The Hon'ble Mr. Justice L. Stuart, C.I.E., I.C.S.	Mr. D. G. Mitchell, C.I.E., I.C.S., Legal Remembrancer.
Dr. F. X. DeSouza, I.C.S., Bar.-at-Law.	Dr. H. S. Gour, M.A., D.Litt., D.C.L., LLD., M.L.A.
Diwan Bahadur Sir T. Desika Achariyar Avargal, Kt.	

Mr. C. V. Krishnaswami Ayyar—Secretary.

List of witnesses examined at Nagpur.

Tuesday, 15th July 1924.

1.	Mr. G. B. De	Sub-Judge, Burhanpur.
*2.	Mr. M. B. S. Niyogi	Pleader, Nagpur.

Wednesday, 16th July 1924.

3.	Mr. Ramrao Madhorao Mandlekar.	Tenant, Nagpur.
4.	Mr. K. L. Pande	Pleader, Ramtek.
5.	Mr. K. B. L. Misra	District and Sessions Judge, West Berar, Akola.

Thursday, 17th July 1924.

6.	Rao Sahib D. Laxminarayan	Landholder and Contractor, Kamptee.
7.	Mr. Y. K. Rajwade	Pleader, Akola.
8.	Mr. Jageshwar Harbaji Parkhi	Merchant, Nagpur.

Friday, 18th July 1924.

*9.	Mr. G. S. Findlay, I.C.S.	District and Sessions Judge, Raipur.
*10.	Mr. F. E. Sanjana	Advocate, Amraoti.
11.	Mr. Radhesham Wahi	Secretary, Central Provinces and Berar Mining Association, Kamptee.

Saturday, 19th July 1924.

12.	Mr. G. B. Lule	Pleader, Wardha.
13.	Rao Bahadur D. M. Khare	Pleader, Wardha.
*14.	Rai Bahadur D. N. Chaudhari	Pleader, Raipur.

Monday, 21st July 1924.

*15. Mr. S. M. Chitnavis, I.S.O. .	Retired Deputy Commissioner, Nagpur.
16. Mr. A. S. Sathe . . .	Additional District and Sessions Judge, Wardha.
*17. Mr. H. D. Coggan . . .	Manager, Central India Mining Company, Limited, Kamptee.
18. Mr. R. N. Bakshi . . .	Nazir, District Court, Nagpur.

Wednesday, 23rd July 1924.

19. Mr. R. M. Bhagade . . .	Additional District and Sessions Judge, Balaghat.
*20. Mr. Habibullah	Pleader, Burhanpur.
21. Mr. Pandurang Krishnaji Deotale.	Tenant, Nagpur.

Thursday, 24th July 1924.

22. Mr. S. Y. Deshmukh . .	Bar.-at-Law, Nagpur.
23. Mr. Nagji Bhai	Middle Class Trader, Nagpur.
*24. Rao Bahadur N. D. Wadegaonkar.	District Judge, Nagpur.

Written statement of Mr. D. G. Mitchell, C.I.E., I.C.S., (not examined.)

Written statement of Mr. M. B. S. NIYOGI, M.A., LL.M., Pleader, Nagpur.

Preliminary.—It is an undeniable fact that the course of justice is inordinately lengthy and means must be devised to reduce delay. It must not, however, be ignored that the law courts are the sanctuary of justice and are sought for as the last resort by contending suitors. It must consequently be clear that the primary purpose of law courts is to dispense justice. The length of time is of necessity a secondary consideration. Concentration of attention on accleration of speed may in all probability result in the wrecking of justice itself. Speedy justice is indeed eminently desirable; it is, however, by no means easy to determine the point of equilibrium between maximum speed of the machinery of law courts and the dispensation of real justice. The rules of procedure, type of individuals that constitute the judiciary and the habits of litigants are the factors which have to be analysed and examined. There is room for improvement in varying degrees in all these. Although the essential fact is admitted and proper measures are taken, still as a rule, in practice, one would rarely find the work of dispensing justice rise up to the exact theoratical standard. There are human elements which upset all theoretical calculations and are not amenable to the control of law making. The law's delays must therefore be accepted by the Government as inevitable and endured by the people as one of the tribulations of life.

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* Written statements and oral evidence printed.

Also written statement of Mr. D. G. Mitchell, C.I.E., I.C.S., M.L.C., Legal Remembrancer to Government, Central Provinces.

Question 1.—Subject to the aforesaid general consideration it may be stated that the reasonable period required for disposals is:—

In High Court.

First appeals, eight months from the date of presentation of appeal.

Second appeals, (*a*) nine months in case of intermediate *ex parte* hearing, (*b*) four months in case of those which could be disposed of under Order 41, rule 11, Civil Procedure Code.

Miscellaneous appeals, same as second appeals.

District and Sub-Courts.

Title suits if contested, one year.

Money suits, six months.

Appeals, four months.

In District Munsif's Courts.

Title suits, eight months.

Money suits, four months.

Questions 2 and 3.—Ordinarily the period actually taken now exceeds in many cases. Main cause of the delay is the shortage of hands to cope with the increasing volume of work.

Apart from the root cause, remedy may be suggested as below:—

(*i*) Improvement in the method of recruitment of judicial officers and special training,

(*ii*) Alteration of rules of procedure.

Method of recruitment and training.

Questions 4 and 5.—The entire judicial service should be recruited from the Bar. Recruitment to Munsifship should be made by a system of competitive examination to be opened to all graduates in law who have practised for not less than two and not more than five years. Members of the Civil Service should not be appointed to any judicial post. High Court judgeships should be recruited directly from the Bar; one post on the High Court Bench must be reserved for the members of the provincial (judicial) service.

District Munsifs, after appointment, must work for six months under the guidance of Subordinate Judges of not less than ten years' standing.

(Note.—The subjects prescribed for the competition examination should be Registration Act, Court Fees Act, Stamp Act, Limitation Act, Succession Certificate and Probate and Administration Acts, Guardian and Wards Act besides leading cases decided by the Local High Court and reported in the Local Law Reports).

Change in procedure.

Question 3.—It should be left to the parties, through their legal advisers, to work out the suit up to the stage of framing of issues. This will obviate the necessity of hearings fixed simply for recording pleadings. After the issues are framed on mutual agreement of parties through their legal advisers the case should go before the Judge for trial. The Judge should then examine the pleadings and the issues struck. He should receive all documentary evidence and examine the parties personally at one sitting and order issue of processes to witnesses accordingly. An intermediate date be fixed to ascertain that the witnesses are served. In every case the party must be held responsible for the proper service of witnesses. Rules provided in Order 16, Civil Procedure Code, 1908, must be rigorously enforced.

Other minor changes.

Question 3.—(*a*) In all regular suits of the value of Rs. 10,000 and above, rules must be framed making it compulsory for senior practitioners to appear with one junior to assist him in the case.

(*b*) Frequent transfers must be avoided.

(*c*) Civil, Criminal and Appellate Courts buildings must be so distant from each other as to render it difficult for legal practitioners to appear in all the courts on the same day.

(*d*) Special enhanced jurisdiction may be conferred on selected munsifs to the extent of Rs. 5,000 in original suits, and up to Rs. 500 in Small Causes.

(*e*) District Judges may be relieved of their work in probate and succession cases and land acquisition proceedings. They may be transferred to Senior Sub-Judges. Public have had no reason to complain whenever this has been tried.

(*f*) Village Panchayat Courts must be instituted for trial of minor cases involving money claims not exceeding Rs. 100, ejectment and rent suits between landlord and tenants, subject to revision by the District Judge.

(*g*) Summary powers under section 128 (*2*) of Civil Procedure Code, 1908, ought to be conferred on selected First Class Sub-Judges allowing a right of appeal to the District Judge. No second appeal should be allowed.

Question 19 (*b*).—Appeals—Section 102, Civil Procedure Code, 1908, should be amended so as to include suits up to the value of Rs. 1,000.

Question 20.—It is probable that out of the many second appeals that are filed in High Courts, some are frivolous. They do not, however, take up much time as they are disposed of under Order XLI, Rule 11, Civil Procedure Code, 1908. No party who has any claim in regard to specific immovable property (which cannot be compensated in money) must be deprived of his right of second appeal, irrespective of the value of the property. The District Judges, particularly members of the Civil Service who sit in appeal without adequate knowledge and experience, cannot invariably be accepted as final judges of facts.

Question 20.—In cases of concurrent judgments of the two lower Courts only, the party should, in money suits, be compelled to deposit the decretal amount before the date of hearing and not at the time of presentation of appeal.

In case of revision petitions against the decrees of Small Cause Courts, the petitioner must be made to deposit the costs in court and decretal amount or furnish adequate security. There is really no reason why the plaintiff who wins his cause after a full trial should be placed in a worse position than one who manages to get an *ex parte* decree in his favour.

As a rule no revision petition except in rare cases should be allowed against interlocutory orders. The only restriction that may be introduced is that the Counsel should certify that the case is a fit one for consideration by the court with a view to shorten litigation or avoid multiplicity of suits.

Questions 25, 28, 29 and 30.—Substitution of postal agency for the present system of service of processes will not improve matters. The process-serving staff must be under the direct control of the judiciary. Nor would the extension of provisions of section 106, Transfer of Property Act, meet the ends in view. Reporting by the process-server to the pleader of the party will not be salutary since the pleader has to rely on his client. There is likelihood of false reports by the parties themselves and the pleader may be misled. This will result either in palpable injustice, denial of justice or protraction of proceedings. This remedy is worse than the disease.

Questions 25, 28, 29 and 30.—The only remedy is to utilize the services of village officials to a greater extent than is done at present.

Questions 27 and 28.—Plaint and pleadings ought not to be received if they are argumentative and verbose. The provisions of Orders VII and VIII ought to be more rigorously enforced. They are generally overlooked.

Question 31.—As proposed in answer to Question 3, the issues should be first framed by the pleaders of the parties and the court should examine them with a view to make them clear or reduce the number.

Question 32.—Provisions of Orders X, XI and XII, Civil Procedure Code are practically ignored. This is due largely to want of time which a legal practitioner can spare in view of the scale of fees he receives for his responsibility of the entire case. This neglect must continue until there is specialization of work amongst legal practitioners.

Question 33.—Examination of parties themselves for the purpose of eliciting the nature and volume of evidence will dispense with a good deal of irrelevant oral evidence. Apart from this procedure, the Judges ought to get the documents admitted or denied on the day on which issues are framed. Unnecessary denial of documents for protracting litigation ought to be visited with penalties in costs.

Questions 34 and 35.—As a rule the provisions of Order 16, Rule 16 (1) are followed. There are some cases wherein large number of witnesses are cited to harass the opponent. The remedy in such cases is to penalise the party by refusing costs of such superfluous or futile witnesses.

Question 36.—If the system of affidavits is introduced as a primary mode of proof to the exclusion of oral examination of witnesses, it is sure to fling open the doors to perjury and fraud.

Question 37.—No time limit should be fixed for examination and cross-examination of witnesses. It ought to be left to the good sense of the Counsel.

Questions 40 and 41.—The work of appointment of guardian *ad litem* or adding legal representatives should be entrusted to a ministerial officer of some standing and experience unless there is a contest.

Question 42.—*Ex parte* injunctions and orders are not generally issued in the lower Courts.

Question 43.—Length of judgment depends upon the idiosyncracy of the Judge. As a rule they are not lengthy.

Question 47.—In comparatively few cases witnesses are examined on commission. This is by no means a serious cause of delay except in rare cases. The commissioner should not be given larger powers such as disallowing questions and so on.

Question 67.—Stay of execution proceedings ought to be left entirely to the discretion of the Court of first appeal. A good deal of time is taken up in the Judicial Commissioner's Court, in deciding applications for obtaining orders staying execution. The costs of these proceedings should be separately taxed and if the Court is satisfied that such order is obtained on insufficient grounds, the party concerned must be made to pay interest at 12 per cent. on the decretal amount.

Question 68.—It is not advisable to curtail the powers to grant injunctions as it is in many cases absolutely necessary. Such orders should be given on adequate security being furnished by the party benefited.

Question 72.—Examination of at least one attesting witness is indispensable so long as the mass of people are illiterate and ignorant: If such evidence is dispensed with, unscrupulous money lenders and land-grabbers will have a wide field for their mischievous activities.

Question 74.—Law of limitation may be made more stringent in case of alienations by widows. Twelve years period of limitation commencing with the death of the widow coupled with the law as to the burden of proof regarding legal necessity on the alienee is a prolific source of litigation from which, not the reversioner, but champertous speculator derives real gain. It ought to be compulsory for a reversioner to sue within 6 years from the date of alienation.

In case of redemption suits 12 years rule should be introduced.

Question 76.—It is highly necessary that all partitions of property should be evidenced by registered documents as it will prevent false pleas and evidence and save the time of the Court.

Question 77.—Partnership transactions with a capital over Rs. 100 must be evidenced by registered documents.

Question 78.—Cases in which doctrine of part performance comes into play are few and it is not necessary to limit it on equitable considerations.

Question 81.—Benami transactions should not be recognised by law. They are responsible for a good deal of fraud and unnecessary litigation. The plea of a document being sham should not be entertained.

Question 83.—The rule of attestation is necessary in case of mortgage deeds as well as sale deeds and long term leases. In case of registered instruments it ought to be enough to prove admission of execution.

Question 84.—Champerty and maintenance bid fair to be a profession. They ought to be declared as offences and the Courts should be authorised to send up such cases to Magistrates by way of complaints and when found proved ought to be visited with fines.

Question 86.—Increasing number of law reports does to some extent interfere with speedy justice. Although citation of cases unofficially published is discouraged, it is difficult in practice to prevent it. Subordinate Courts follow as a rule the rulings of their respective High Courts published in the official Law Reports. In the High Court it is not advisable to restrict the range of reference to case law. It seems to speed up rather than retard the course of justice.

Codification of personal laws is extremely necessary. In the absence of codified enactments, prevalence of conflicting views or ambiguous enunciation of law by the Privy Council on intricate questions of Hindu and Muhammadan laws have to be considered by Bench of Judges and this procedure necessarily taxes the time of the Courts.

Mr. M. B. S. NIYOGI, Pleader, Nagpur, called and examined on Tuesday, the 15th July 1924.

Mr. Justice Stuart.—*Q.* I understand you are a senior member of the Bar at Nagpur. For how many years have you been practising here?

A. I have been practising here for the last fourteen years.

Q. I understand too you are a Master of Laws?

A. Yes of Bombay. I have been practising exclusively in the High Court for ten years.

Q. I will not take you through all the matters. Your written statement is written very carefully and we will keep it on the file. I will just ask you questions with regard to one or two points. I see you are in favour of leaving the preliminary work in a suit to the counsel of the parties as is done to a large extent in England.

A. Yes.

Q. Do you think that will be feasible every where?

A. I think it will be feasible in contested cases. You will find a number of pleaders even in sub-divisions and they are always available. There is hardly any case here which is contested and in which parties do not engage counsel.

Q. To go into details, what is the procedure here? Is the case opened by filing of the plaint?

A. Yes.

Q. How would you fix the date?

A. As soon as the plaint is filed it will go before the judge; the judge will direct that the issues must be ready within four months or so; he will send the file to the ministerial officer and the ministerial officer will go through it and make it ready for trial after the framing of the issues by that date.

Q. But how would you check the waste of time? There are large number of cases in which the defendant wastes time by putting forward every sort of absurd excuse for the omission to file his written statement. Take the case of a defendant in a suit on a mortgage who is in possession of the property. The longer the case lasts the longer he remains in possession. Now he puts forward every sort of excuse why he could not get his written statement ready in time. How would you apply the check there?

A. Every thing will be decided by the ministerial officer and he will be a competent man with sufficient legal knowledge.

Q. Of course that is the registrar's system which we ourselves are willing to introduce.

A. Yes. In the Central Provinces there is not much delay except in some cases—about 10 or 20 per cent. of cases.

Q. I have come across instances in other provinces where for no reason at all—absolutely no reason at all, the written statement has not been filed after nine months.

A. It must be an exceptional case.

Q. It is by no means exceptional in other parts of India. There might be no delay here, but I am sorry to say that such delay in other places is very common. If you take 20 or 30 cases at random you will find delay in seven or eight cases.

A. You won't find it in the Central Provinces.

Q. Then with regard to issues, you would hold the judge responsible for the checking of issues and saying that they are correct issues, but you say that it will save a lot of time if the issues are framed by the pleaders on both sides.

A. Yes, otherwise there will be a chance of remand.

Dr. DeSouza.—*Q*. I think your idea is that all the work right up to the settlement of issues should be done by the ministerial officer.

A. Under the direction of the ministerial officer by the pleaders.

Mr. Justice Stuart.—*Q*. Do you wish to see the whole of the judicial service recruited from the Bar and every body else excluded? Is this based upon general principles or other consideration? Without mentioning names do you find that the judges who had not practised at the bar are not good?

A. I think so. It is based upon my experience of appellate courts. I command good practice in almost all districts. I have practice in the Central Provinces and Berar.

Q. You find that there are large numbers of reversals of cases on points of law?

A. On points of law and also on findings of facts.

Q. Do you find that there are more reversals of cases from civilian judges from points of law than there are of other judges?

A. I cannot give you exact statistics. But I think the majority must fail, that is, those appeals decided by civilian judges.

Q. Do you find that in the case of subordinate judges?

A. I think that subordinate judges who after years of experience take up the work can be trusted to come to better findings of facts. A civilian has no experience and he cannot know the inner life of the people.

Q. How many of the Hindus know about the inner life of the Muhammadans?

Sir T. Desikachari.—I think they understand enough.

A. In Nagpur both communities have been on very cordial relationship. In Berar also it is the case.

Chairman.—*Q*. What you tell me really surprises me in some ways. We have been told in other provinces that people complained only of their lack of *legal* training, but that they are very good at facts. Your point is that they are bad in facts. In other provinces what they say is that they are better on facts.

A. Probably the period of probation there is much longer.

Dr. DeSouza.—In this province there is no period of probation at all.

Mr. Justice Stuart.—*Q*. Would you tell me some thing about champerty and maintenence? Is it a very serious evil?

A. I can say very definitely about Berar. The great complaint is that most of the lands are now passing into the hands of the Marwaris. That is due to the fact that he has got agents and himself takes interest and finds out people who are in litigation, advances money and gets the land.

Q. They are on the look out to buy these claims and these claims are successful?

A. Yes.

Q. When the claim is successful how much is the advantage to the Marwari and how much is it for the owner?

A. He gets as much as half so far as the contract on paper goes. But I am afraid he does not get even half.

Q. In many cases does he get more than half?

A. I have no definite data.

Q. What is your general impression?

A. Litigation is on the increase every day. They make a profession of it not only in Berar, but in other provinces as well.

Dr. DeSouza.—You say that these claims are successful. Then they must be *bonâ fide*.

A. Yes.

Chairman.—*Q*. There are three entirely separate problems. One is to make a special law dealing with that matter; another is to give the court power to drive away the man who gives financial support; and the third is to take steps to protect the defendant from being sued in a false case and put to a great deal of trouble and expense. Now the last thing, I gather, is not a form of the problem that is most rampant in Berar.

A. No.

Mr. Justice Stuart.—You do not get false and speculative cases?

A. No.

Q. So perhaps the best remedy, we can suggest, would be to put the parties on terms that if such a case succeeds, the actual man—the reversioner—should be permitted to come to the court and state what had happened and say "I am ready to re-pay the man what he advanced, even on a higher interest, but he is not to get the property." If that is done the evil will very soon stop.

A. They ought to produce their agreements in the court and the court should see the nature of the agreement.

Dr. Gour.—*Q*. As regards making over cases to the Village Panchayats, would you like them to hear cases of this character, where communal, racial or caste feeling runs high? I will give you an instance. A *mohargar* draws water from a Hindu well. The Hindu beats him. The *mohargar* institutes a suit for Rs. 50 for damages for assault. The case comes before the Village Panchayat. Would you like the Village Panchayat to deal with that case?

A. That would not come within the ambit of money suits.

Q. You will therefore classify suits to be tried by the village panchayat, exempting cases in which communal or racial feeling is likely to be displayed?

A. Yes.

Q. And now as regards the Honorary Magistrates, you say that they have not given satisfaction. Do you not think that it is due to the method of selection?

A. It is to a very large extent.

Q. Generally, you think, in Central Provinces, magistrates are selected on grounds other than their qualifications?

A. They are.

Q. Now supposing there was a better selected agency appointed, do you not think that Honorary Magistrates would shorten litigation of that character and they will command wider public confidence?

A. By all means.

Q. Therefore the complaint is not so much against the magistracy as against the method of selection?

A. Exactly.

Q. Now as regards the civilian judges, is your complaint confined to the subordinate judiciary or also to the High Court judiciary?

A. Well, as regards the High Court, I may say that their findings on facts may be accepted, but then as regards the knowledge of the Law, I think, they ought to be of somewhat high level.

Q. You think that civilian judges' knowledge of law is not up to the mark?

A. Yes.

Q. They do not inspire public confidence to the same extent as Barrister Judges?

A. Well I do not know what is meant by public confidence—confidence of the Bar?

Q. Yes, confidence of the Bar.

A. I do not think they do.

Q. Do you not think that it is good not to have justice which does not obtain public confidence?

A. Yes.

Q. Do you not think that public feeling in the courts is that civilian judges are apt to be summary in the disposal of their cases; that they do not bring to bear upon the disposal of cases that knowledge of mankind which a professionally trained lawyer would do?

A. A civilian judge relies upon his individual commonsense whereas he should rely upon the judicial commonsense. Certain facts which are before him ought to be seen in the light of judicial principle and not merely in the light of individual commonsense. He may, from his own standpoint, be perfectly right, but he cannot be correct from the judicial standpoint.

Mr. Justice Stuart.—*Q*. What is the " judicial standpoint " in knowing whether a man is telling the truth or not, as opposed to commonsense?

A. That depends upon with what mind and training the judge looks upon the statement of a man. I know of some cases. There was a case of a Hindu who wanted to show his defence in a suit for maintenance filed by his wife saying " I have seen my wife going wrong." A Hindu judge would come to a different finding whereas a civilian judge would come to a different finding.

Q. Supposing the civilian is a Hindu?

A. A Hindu Civilian will come to a different finding.

Q. Would an English Barrister come to a better finding?

A. If he were to pass a competitive test, which I have suggested, he would, under my scheme, become a High Court Judge after 15 to 20 years' service and by that time a Barrister would be good judge on facts. But a civilian is appointed formally to acquaint himself with the superficial work as a subordinate judge and then he is posted as a District Judge.

Sir T. Desikachari.—You will like him to serve as a District Munsif?

A. Yes.

Dr. Gour.—Your point is that professional men make better judges than the civilian judges, on the ground that they have got professional experience, and that you say is a necessary equipment for the performance of efficient judicial work.

A. Yes.

Q. Now as regards benami transactions do you know that they are not uncommon in England, it is a branch of the Law of Trusts?

A. Yes.

Q. Would you like to alter the Law of Trusts to do away with benami transactions?

A. Not being educated in England, I would not be able to say very definitely about it. So far as I know the idea of benami, as it prevails in India, does not prevail in England. It is in form a trust.

Q. Resultant trust?

A. It is only with reference to certain legal contracts.

Q. You would like to do away with benami transactions because they have the effect of obscuring title?

A. Exactly.

Q. They are generally used for that purpose?

A. To defraud the creditor.

Q. The obscuring of title may lead to a number of results—defrauding of creditors, failure of justice, defeat of creditors and so on.

A. Yes.

Dr. Gour.—*Q*. As regards champerty and maintenance, the Privy Council say that the law of champerty and maintenance does not apply to this country and the question is whether the contract is against public policy. You think that a contract being against public policy is one thing and the embarking of a person on litigation or helping litigation, righteous or unrighteous, is another thing. Do you think that the evil of champerty and maintenance is such as calls for legislative interference?

A. Yes.

Q. Don't you think that the present Act should be amended so as to make champertous and maintenance contracts void subject to what Mr. Justice Stuart has pointed out, *viz.*, that the creditor might be given the refund of the money he has paid together with a reasonable rate of interest and that the courts should be given the power to revise the contract by giving to the person having the benefit of champerty and maintenance the amount of money which he has advanced together with a reasonable rate of interest?

A. Yes.

Q. That will support the claims of pauper litigants and at the same time avoid the evil of champerty and maintenance.

A. Yes.

Mr. Mitchell.—*Q*. You were referring to the question of Civilian Judges in the High Court. I understand that your point is that their knowledge of law is below the necessary standard.

A. Yes. In some very sensational cases the rulings of the Judges of our High Court are not accepted by the Privy Council.

Q. Your point is that they are below the necessary standard and you cited 2 cases which went before the Privy Council; so that I understand from you that you take as a sure test of the Judges' knowledge of law, the decisions of the Privy Council.

A. Yes, as well as our experience that often fine arguments do not appeal to an European Civilian; and particularly we find that the Madras judgments do not appeal to a civilian, because they go into fine distinctions. Bombay judgments might appeal, because they are based upon commonsense.

Q. Have you collected figures to show the results of appeals from the different provinces and the Judges of the local High Court?

A. It is unnecessary; because it is very rarely that we find two civilian Judges sitting together.

Q. You take it from me that when this test is applied the Judge who comes best out of it is an Indian Civilian who has had no training whatever and the Judge who comes worst out of it is an Indian Barrister.

A. It may be in one case. But then even now, I can say, that every day that view is creating trouble.

Written Statement of Mr. G. S. FINDLAY, I.C.S., District and Sessions Judge, Raipur.

I.

1. There is no Original side in the Central Provinces High Court.

A.

(i) High Courts.

First appeal, 6 months.

Second appeal, 8 months.

Miscellaneous appeal, 4 months.

(ii) District and Sub-Courts.

Title suits, 6 months.

Money suits, 4 to 5 months.

Regular and civil miscellaneous appeals, 3 months.

Small Causes, 3 months.

B. (*i*) I should say 3 months should prove ample.

C. Not applicable to Central Provinces.

2. Within the last 10 to 15 years there has been a great improvement in my opinion in this connection. A stringent system of annual inspection of all Civil Courts by the District Judge is now in force and in these inspections great attenton and stress is laid upon the matter of unnecessary prolongation of proceedings. There has also been a great improvement in the Judicial personnel.

3. I can suggest no panacea in this connection. I have referred below to possible remedies or palliatives.

4. (*i*) Of recent years there has been a great improvement in the class of Subordinate Judges recruited. Practically all are law graduates. I am very dubious as to whether any great advantage accrues from insisting that candidates should practise at the Bar for a time before being appointed. I have had experience of officers who have fulfilled this condition and have found them to be no more efficient than candidates who joined directly. In these provinces there are a number of outlying stations where the work is light and simple in nature and in practice it is usually possible to post the inexperienced beginners to such places. For a certain type of man this answers well: in the case of others it is advisable to post them at a headquarters first of all. There guidance and help is easily available to them.

(ii) District Judges.

I think 6 years' experience on the Bench should be insisted upon before a Civilian or member of the Commission is appointed a District Judge. I should also be prepared to agree that the possession of a Law Degree or of the qualifications of Barrister-at-Law should be made a *sine qua non.*

(iii) *High Court Judges.*

In the case of Civilians or members of the Commission, I should insist on the qualifications last specified in their case also; space does not permit of the discussion of the vexed question as to the distribution of posts between members of the Bar and officials, whether members of the Commission or members of Provincial Service. I do not, however, regard the question as involving this matter.

5. Not applicable to the Central Provinces.

6. Undoubtedly in the past there was an abuse in this connection but of recent years the trouble has been, if not eliminated, very much minimised.

7. Any *à priori* or arbitrary standard of efficiency is impossible. Speedy or large disposals do not necessarily mean good work. Any suggestions I have to make will be found below.

8. Very little delay from this in Central Provinces. I think certain Judges are inclined to make far too much of the delay supposed to be due to waiting for legal practitioners who have cases in more Courts than one on the same day. A little tact and care on the part of the individual Judge should practically obviate all such delays for it should be possible to proceed with other case work or with administrative or chamber work in the interval of waiting. Indeed, if cordial and sensible relations prevail between the members of the Bar and the Judge, such intervals will but rarely occur. In the Central Provinces the legal practitioner is usually paid a lump fee for the case so that no abuse arises over the matter of daily fees.

9. No.

10 and 11. Not applicable to the Central Provinces.

12. In these Provinces the District Judge has considerable administrative work. My miscellaneous office work probably consumes 1 to 1½ hours per day. I moreover reckon that in my own Division (Chhattisgarh) about ⅓th of my working time is spent in inspection work but in my opinion the result amply justifies the time so consumed. Every Subordinate Court has to be formally inspected once a year. On the other hand there is a tendency to load the District Judge, particularly under the new political conditions, with duties which could be equally performed by others. I cite, for example, the hearing of objections and petitions with reference to the preparation of electoral Rolls for the new Councils and the like. Several days of my time this year have been consumed in almost mechanical work of this description which in my opinion might be performed equally well by an agency which would correspond to a revising Barrister at Home. Again the District Judge from time to time finds himself saddled with such non-judicial work as the correction of law papers in departmental examinatons. Duties like these make considerable inroads on his time.

13. We have already considerable devolution in this respect in the Central Provinces and I do not think anything more is at present required. Succession Certificate powers might be given more widely to Subordinate Judges at outlying places.

14. In certain parts of these Provinces village courts or Panchayats might conceivably be invested with exclusive jurisdiction in petty money suits but the measure could not be a general one. A large part of the province is not sufficiently advanced for such an innovation.

15. The answer is in the negative to the first question except that I would exclude Article 35 *(ii)*. As regards the second question I do not think that such suits could with safety be tried by the summary procedure.

16. The suggestion is unnecessary in these Provinces.

17. I am strongly opposed to this suggestion. The type of Sub-Registrar we have in these Provinces could not suitably be empowered with any such jurisdiction. Were it conceivable that the suggestion could be adopted in the Central Provinces, it would not make for justice at all.

18. I do not think it is practicable further to restrict the right of appeal.

19. Not applicable to the Central Provinces.

20. In my experience as Additional Judicial Commissioner the percentage of frivolous second appeals is comparatively small. I am opposed to curtailing this right.

21. In suits below Rs. 1,000 in value I should be prepared to accept this suggestion. It might conceivably cause hardship in isolated cases in which the litigants are poverty striken but on the whole the benefits would exceed the disadvantages. It is very often the poor litigant who is led by interested or ill considered advice to file hopeless second appeals and the measure proposed would effectively check this practice.

22. This power is sufficiently used in the High Court but District Courts, for some reason or other, frequently fail to have sufficient recourse to it. In the case of Judges with appellate powers under the District Judge it is up to the latter to see that full use is made of the power in question while, in the case of the District Judge himself, the same duty rests with the High Court.

23. There is possibly some abuse of the right of application of revision to the High Court. I accept the suggestion that as regards Provincial Small Cause Courts revisions, the decretal amount should be deposited in court. I think that the right of revision under section 115 against interlocutory orders could with safety be abolished.

24 and 25. I believe the sending of summonses and processes by registered post would prove a considerable palliative in this connection but in these Provinces Post Office agency would not be available in a large proportion of cases. In the Central Provinces, when a defendant wilfully avoids service, the Courts usually order substituted service promptly enough. A great cause of delay in these Provinces occurs in the service of minors. Not only the proposed guardian but the minor has to be served and the latter process is little less than a farce. I think the onus should be thrown on the nominated natural guardian of the minor of showing sufficient cause for refusing to act on the minor's behalf in the suit and I would empower the Courts in the event of his continued refusal (if the Court considers him a proper guardian) to recover from him by summary process the amount of fee necessary to engage a pleader to defend the suit on behalf of the minor. If the minor has no natural guardian a pleader should be appointed as guardian, the fee for his appointment being in the meantime paid by the other side and becoming costs in the suit.

At present our Courts often have to resort to the farce of appointing the Nazir or the Court Reader as the minor's guardian. This official has no knowledge of, or interest in, the case and there is usually no way of securing funds to employ a pleader for him. The matter thus leads to a mere *reductio ad absurdum*, being nothing more than a mechanical compliance with the letter of the law but a glaring negation of its spirit.

As regards recourse to the special procedure under section 106, Transfer of Property Act, I am not enthusiastic. I think it would give rise to difficulties in practice.

26. Our plaints are quite different from the English writ and statement of claims which would be unsuitable in this country.

27. No, they are very generally observed.

28. As regards the Post Office *vide* my answers to Questions 24 and 25 above, village officers in the Central Provinces assist the process-server in serving-processes. It is, indeed a duty imposed on them by statutory rule under the Land Revenue Act. On the other hand this class of village officer in the Central Provinces could not safely be used for serving-processes alone.

29. Quite inapplicable to Central Provinces conditions.

30. Nothing would be gained by this. In these Provinces the process-server proceeds to the village where his process has to be served and enlists

the aid of the village *Kotwar* or *Mukaddam* to point out the man required. A pleader of the party concerned could not probably do this and in any event recourse to him would involve delay. Where there is doubt or difficulty about the identity or place of residence of a person to be served, I call on the party at whose instance the process is being issued, to send a man to assist the process-server and the average party is only too glad to do this. It is difficult to understand what benefit could accrue from this suggestion. The same delay would accrue as at present *plus* the time lost by the process-server in consulting the pleader.

31. It is in my opinion the duty of the Court to frame issues and I would not insist on parties submitting draft issues. What is desirable is that the Court should read out or show its tentative issues to the parties and if they or their counsel have any suggestions to make, the Court can consider them and amend or alter the issues. The system of expecting the parties, as a matter of course, to frame draft issues is in my opinion undesirable.

32. For some reason or other Orders XI and XII in particular are often not given fair play by an individual Judge. It is difficult to be dogmatic as to the reasons for this neglect. Pleaders and Judges alike must share in the blame. Inspecting Officers can do much in this connection to put Judges on the right path and the latter in turn can bring home their responsibilities to parties and pleaders by penalising them in the matter of costs.

33. In the conditions prevalent in this country where perjury is regrettably common in civil cases, I regard this suggestion as a dangerous one. The conditions in Bengal are very dissimilar from Central Provinces and I do not think that the examination of the plaintiff and the defendant should be carried to the length suggested at the first hearing of the case.

34. Yes, I believe it to be strictly enforced.

35. Undoubtedly much unnecessary and avoidable oral examination is admitted. This tendency can be effectively curbed by saddling the party responsible with costs of the witnesses but this is a power that the individual Judge is often lath to exercise.

36. I am strongly in favour of this suggestion. Its adoption would save time and simplify procedure.

37. The suggestion in this form seems to me an impossible one. At the same time there is undoubtedly much abuse of cross-examination particularly by junior members of the Bar. The Court's power to disallow irrelevant questions no doubt exists under the Evidence Act but it is a matter of extreme difficulty to say when the limit of relevancy has been reached. Much depends on the personality of the Judge. A tactful Judge who knows his law and procedure can usually curb useless cross-examination but another type of Judge who always sees the appellate court hanging over him from behind is usually to blame for timidity in the way of not disallowing unnecessary cross-examination.

38. I do not think that the suggestion would be an easy one to carry out in practice. The procedure under Order XXXVII would appear almost wholly inapplicable to Central Provinces conditions.

39. The principle of representative suits might suitably be extended. In this connection I have discussed the matter with Rai Bahadur D. N. Chowdhuri with whose detailed answer I find myself in sympathy.

40. I am opposed to this suggestion. It would work unfairly in Central Provinces conditions.

41. *Vide* my answer to Questions 24 and 25, I accept the suggestion made in the 3rd sentence of this question.

42. There is little or no abuse in this connection in the Central Provinces. Section 95 of the Civil Procedure Code is sufficiently deterrent.

43. No action is required in these Provinces in this connection.

44. As a rule this is done.

45. Judges usually fix the dates. This is a matter in which, owing to the thorough system of inspection, there has been a great improvement of recent years. The keeping of a judicial diary by the Judge in this connection provides most valuable material for the Inspecting Officer to scrutinise the Judge's method of work and arrangement of his file. I regard the fixing of the dates for cases and the general arrangement of the file as peculiarly a matter for the Judge himself. It is disastrous to leave this duty to some Subordinate Official.

46. I believe pleaders are usually consulted.

47. Much delay occurs in the case of commissions issued to Native and Feudatory States. I do not think it would be safe to add to the powers of the commissioner nor would insist always on written interrogatories.

48. I do not think in these Provinces it is necessary to insist on a written application supported by affidavit for adjournment. Adjournments are rarely asked for.

49. Here usually as many witnesses as are present are examined on one day and, if not, are finished on the following days also. This system works more satisfactorily and is conducive to less delay in the end than that of waiting until all the witnesses required are present at one time. In the conditions prevailing in the Central Provinces, with bad communications and long distances to travel, the latter system would prove impossible in practice.

50. Yes.

51. Hardly applicable in the Central Provinces.

52. I have nothing to suggest.

53. I have been unable to understand the real meaning of the proposal.

54. A good suggestion.

55. I accept this also.

56. (*a*) I agree. The period might with safety be reduced to 6 years.

(*b*) I dislike the proposal. I question if it would reduce work. It would probably entail more frequent and inopportune applications.

(*c*) I accept this. I am also in favour of the suggestion that the decree-holder need not apply every 3 years or one year provided he does not exceed the 6 or 12 years' limit. It is always open to the judgment-debtor to pay up or comply with the decree and if instead of doing so he allows the interest to accumulate that is his look out and it does not lie in his mouth to complain.

57. I see no objection to the proposed amendment.

58. This suggestion would work hardly in the Central Provinces.

59. I agree with this suggestion. As regards the proposed deletion or modification of Order 21, Rule 16, I have little experience of this particular matter and can offer no opinion of value.

60. Although this power should be seldom used, still I think it is necessary to retain the provision; otherwise we might have, for example, a determined and vindictive decree-holder taking out execution at the same time against both the property and *person of a pardanashin lady.*

61. (*a*) I see no reason for the special notice under Order 21, Rule 22.

(*b*) I would redraft all this rule. At present issue of notice is mandatory. I would leave the matter to the Court's discretion. It could then issue the notice if the circumstances of the case appear to it to make the step advisable. As our Judges improve in training and qualifications we can afford to make our procedure in such points of detail less rigid and more adaptable.

62. On the whole I do not think these suggestions could be adopted with safety. It is only " on sufficient cause shown " that the Court acts.

63. I concur in this suggestion.

64. I think the judgment-debtor should be served with a copy of a proclamation of sale. If writ of attachment and sale proclamation is issued simultaneously hardship would be involved in the case of *bonâ fide* objectors to

the attachment. Moreover, I cannot understand how proclamation of sale could issue before the act of attachment. This proposal seems to me an illogical one. It is also impracticable as it would not be possible to describe the property accurately before attachment. In these Provinces pleaders often do not appear in execution proceedings, their services having terminated with the passing of the decree. The suggestion that notice should be served on the pleader is, therefore, not a feasible one.

65. No, our village *Mukaddams* and *Kotwars* could not safely be entrusted with powers of arrest. Under the system in vogue they give valuable assistance to the process-server but I would go no further than this.

66. I think the suggestions in (*a*), (*b*), (*c*) and (*d*) are sound ones.

The one suit would last longer but the total saving would be considerable.

(*e*) Usually 6 months are allowed. Some time is in my opinion necessary but on the whole the tendency is to be too liberal in this connection. I should put the minimum period at 3 months.

I dislike the idea of abolishing the preliminary decree in simple mortgage suits. It would put the mortgagor in a worse position than a judgment-debtor finds himself in under Order 21, Rule 83.

I do not think a separate personal decree is required.

67. Stay orders are infrequent in these Provinces and no changes are necessary in this connection.

68. I favour this suggestion.

69. Undoubtedly the insolvency law tends to aid the dishonest judgment-debtor who even in these Provinces is rapidly awaking to the unscrupulous use he can make of it. An adjudication order can be secured far too readily at present. I would insist on most stringent enquiry as to the judgment-debtor's *bona* or *mala fides* and the like. Were this done there would be no need for further devolution. Our Additional District Judges usually dispose of these cases and there is no great delay.

70. Little delay from this cause occurs in these Provinces. The provision for arrest or attachment proves sufficient.

71. I do not know whether it would be possible to amend the law of evidence in such a way as to give the Courts more specific powers to curb unnecessary minute or detailed cross-examination. In theory, it is desirable for the Courts to have some more specific power in this connection but the difficulty is to frame any provision which would prove efficient in practice. The need of such a provision provides an excellent opportunity for an adept draftsman to exercise his skill.

72. I would accept the position that a mortgage deed, if registered, is valid until the contrary is shown but I would retain the provision for attestation. *Vide* answer to No. 83 below.

73. In the Central Provinces there is little scope for improvement in this connection. Where it is necessary to obtain certified copies very little time is lost. The copying department is under the supervision of the District Judge and any undue delay in preparing copies necessarily comes to his notice.

74 and 75. I have no suggestion to make. So far as the Central Provinces is concerned there is no crying evil in this connection.

76. No. The proposal would involve great hardship on the poorer classes unless a fixed fee be provided for instead of *ad valorem* stamp duty.

77. In this case I am inclined to concur but I would place the pecuniary limit higher—say Rs. 300 instead of Rs. 100.

78. I do not concur in the suggestion.

79. I see no necessity for this suggestion. The return of the document with endorsement of payment made thereon by the obligee should also be sufficient. It would entail great hardship to insist on registration—altogether apart from the question of the expense involved in the latter process.

80. Such a provision would work hardly under the conditions prevalent in the Central Provinces. In these Provinces many bonds for petty amounts are executed by illiterate people who if registration were so insisted upon would have to travel many miles—a week's journey or so to reach a Sub-Registrar.

81. The *benami* system is undoubtedly an undesirable one but just as I believe that a country has, as a rule, the kind of Government which it deserves, so also I think it is impossible to eradicate the device by any such heroic measure as that proposed. Were the suggestion adopted it might conceivably reduce delay in a few cases, but would prove impossible of fulfilment in the present conditions of Indian society. The change can only come about by evolution—not by a revolutionary measure of this description. The proposal in effect implies deliberately closing one's eyes to a custom which is engrained in the life of the people and which is in particular almost inseparable from the Joint Family System.

82. Our Court-fees were recently considerably increased and I do not think that any further increase is possible at present. I wish, however, one could allow double pleaders' fees to the defendant dragged to Court in a frivolous suit.

83. I would retain the provision for attestation of mortgages but I accept the widened scope of attestation as including admission of execution by the mortgagor to the witness concerned.

I am aware of the argument often advanced by those who favour the abolition of attestation of mortgages, *viz.*, that this condition is not required, *e.g.*, in the case of out and out sales and perpetual leases. With all respect this argument seems to me a superficial one. Firstly the sale or perpetual lease is evidenced straightaway by overt facts like possession and enjoyment of the property. This is not true of the ordinary mortgage. Again the interests of third parties are so often involved and further there is the item of the right of redemption as an existent fact to be kept in mind. The particular question before me is, I gather, whether the abolition of the necessity for attestation would lessen judicial delay. Personally, I believe it would have precisely the opposite effect. If, in a mortgage suit, pleas regarding non-receipt of consideration, non-execution, undue influence, state of mind of the mortgagor and the like are raised, the existence of attesting witnesses rather narrows than widens the scope of the oral evidence which has to be taken. The attesting witnesses stand, so to speak, on a higher plane than other witnesses and it is on their evidence—that of witnesses who in the normal case were undoubtedly present at execution—that the Court, as a rule, decides the questions at issue. If we abolish the attesting witnesses, the field of evidence will, in Indian conditions, be widened rather than curtailed and the proposed reform would, I believe, defeat the very object which I presume it has in view.

84. I can suggest no specific remedy at present. Indian society is not ready yet for any specific advance in this connection.

85. A very common type of suit in these Provinces is between partners or principal and agent in a retail business where a mass of details as to, *e.g.*, shortages and the like in merchandise have to be considered. The evidence on which the Courts have to decide these matters is, as a rule, of a stilted and comparatively worthless description which a Court is peculiarly unfitted to deal with and very often the Court has to choose between two almost equally worthless alternatives. It is extremely difficult for the Judge really to do justice between the parties and this class of case I should like to see sent to a referee with technical knowledge who could deal much more satisfactorily with the matters involved than any Court can. Use might also be made of referees in suits for mesne profits, damages and the like.

86. A certain type of conscientious and painstaking Judge no doubt becomes obfuscated by the heterogeneous mass of law reports and often goes through his service losing sight of the wood because of the trees. Personally I think this type of Judge would probably be helped if a yearly digest like

the old "Woodman" were from time to time available for him. It is difficult to suggest any other remedy. If we were to have prepared a yearly compiled selection from the various High Court Reports published in India much delay would ensue before these can reach the Courts. Moreover, the compiler would have to choose between conflicting opinions on a given point in published decisions of various High Courts. It is difficult, in short, under present conditions to suggest any radical remedy in this connection.

87. Our Indian arrangement in law is very largely codified, I do not believe any further codification would make Civil Justice more speedy or economical. Hindu and Muhammadan Law with that of Torts are the main branches outstanding but there is no crying need for their codification.

II.

Note on the proposal to constitute benches of two Judges to deal with certain Civil Appeals.

I understand the proposal on which I desire to give my opinion is to constitute benches of two Judges who would deal finally with all appeals in suits under Rs. 1,000 in value.

2. In the first place, as regards any such scheme, I should be opposed to it if the decision of the two Judges would be necessarily final both on questions of fact and law. Any such scheme would not command the confidence of the public or of the members of the Bar and the trying Judges themselves would probably find themselves embarrassed if any novel or especially knotty point of law arose, and such a point is quite as likely to arise in a suit of small value as in one of high value. I would make it a *sine qua non* in any such scheme that the Judges should have power to refer a legal point to the High Court.

3. I willingly concede that any such scheme, cutting out automatically as it would the right of second appeal, might tend to shorten and speed up litigation but I feel constrained to point out that there are graver considerations of expediency to be set against the proposal. In the first place the litigating public and the members of local and High Court Bars alike are so habituated to look on the High Court decision as the steady and authoritative beacon in comparison with what may be termed the will o' the wisp decisions of Lower Courts that in my opinion the scheme would prove intensely unpopular in practice. Secondly, the members of the Bench would in practice have to be Subordinate Judges: men of the rank of District Judge would not be available unless we were to have an *ad hoc* peripatetic Bench of 2 District Judges which would move through the Province or part of the Province trying such appeals. If the Bench were to consist of Subordinate Judges, anomalies would arise in practice with possibly Judges senior to them taking the opposite point of view, let us say, on a legal point in a similar suit of higher value. Let us assume that the District Judge's view is confirmed in appeal or second appeal by the High Court. The Bench of Subordinate Judges takes the opposite point of view and refuses to refer the case. Under such circumstances a highly anomalous position would arise unless the High Court had power *suo motu* to call for the case and interfere so as to set things right. If we admit this latter condition, then we are back at our starting point, for litigants in cases in which the Bench had decided would doubtless move the High Court to interfere and thus in practice there would come to be a right of second appeal—under possibly another name—again.

4. Thirdly, there would seem to me to be grave practical difficulties in working out any such scheme, at any rate so far as the Central Provinces, are concerned. The two Judges of the Bench would have to be of approximately equal standing: as a rule in any given district of the Central Provinces these would not be available. The obvious alternative would be to introduce a Subordinate Judge from another district but this step would

involve dislocation of the latter's work and would entail undue loss of time and expense. Lastly, if we take away these two Judges for, let us say, a week in a month from their other work, there will necessarily be delay thereto and in the end, looking at litigation as a whole, I question whether the saving of time involved, if any, would be sufficient to make up for the disadvantages of the proposal.

5. On the whole therefore, although I admit the proposal is attractive, I am inclined to think that the disadvantages outweigh its advantages and that in practice it might prove to be one of these attractive "short cuts" which the way-farer ultimately finds the longest road of all.

Mr. G. S. FINDLAY, I.C.S., District and Sessions Judge, Raipur, called and examined on Friday, the 18th July 1924.

Mr. Justice Stuart.—*Q.* I think Mr. Findlay, you joined the service in 1898?

Mr. Findlay.—Yes.

Q. And you have been in the judiciary for many years?

A. Since 1904.

Q. And you have been a Divisional Judge—a District Judge as it is called now—in a large number of districts and also been in the Judicial Commissioner's Court for various periods?

A. Yes, I have been.

Q. You lay a great stress at the beginning of your valuable note on the necessity for continued inspection of the Courts below. Do you think that it is possible in the Central Provinces always to provide the necessary inspection, with the present staff?

A. In the divisions of which I have been fortunate enough to hold charge during the time I have been in judicial service—I was in the Secretariat for good many years—it has been possible, but I understand that conditions in Berar are somewhat different.

Q. Berar consists of four districts?

A. Yes.

Q. Then it might be possible to arrange for inspection. However, it is your opinion that constant supervison is absolutely necessary if judicial work is to be efficient in this Province?

A. I must certainly think so. When I compare the conditions now with the conditions at a time when inspection was not insisted on rigorously, I see a change myself, particularly as regards the work of outlying judges.

Q. Does personal inspection bring you absolutely in touch with the present staff?

A. It does.

Q. In your experience does the staff welcome that kind of inspection? Do they like having the District Judge in close touch with them?

A. Good men like it.

Q. After all the majority of our provincial judicial officers are good men and they do very much better if they are in close touch with the supervising officer and if they can state their difficulties to him.

A. Undoubtedly, that is a very important point. There is a Munsif in one of my outlying tehsils, and with him, I have been able to talk things over. I take his diary; I choose cases and have a careful look over them and see how they are disposed of. We are able to talk things over.

Dr. DeSouza.—*Q.* Are Order Sheets kept in English or the vernacular?

A. Invariably in English except in the case of one or two Honorary Magistrates. The Order Sheet is normally written by the Subordinate Judge himself, and perhaps the absolutely formal diary is written by the reader.

Q. But if the Order Sheet is not written in English then inspection becomes more difficult?

A. Undoubtedly, but that question does not arise in my district.

Mr. Justice Stuart.—*Q.* Do you have statements of delays sent up to you?

A. Yes.

Q. Does the Order Sheet accompany them?

A. No. Under the old system one had to prepare a sort of Order Sheet showing why a case was pending.

Q. In my province a statement showing delays in suits pending for six months goes to the District Judge and a statement showing delays in suits pending over a year goes on from the Judge to the High Court.

A. We show cases pending over six months and judgments pending over a month.

Q. Does that go to the Judicial Commissioner?

A. Yes.

Chairman.—*Q.* What goes to him, simply a return showing how many cases are there?

A. Yes. That is the practice, but the Judicial Commissioner sometime wants to know the reasons for delay.

Mr. Justice Stuart.—The statement itself does not show the reasons?

A. No, it gives only the statistics.

Q. It is not sent up like this—this case is pending over a year, the reasons being that it is awaiting decision from the Judicial Commissioner's Court?

A. This is sometime noted in the "Remarks column," but not invariably.

Q. Now the next point you have taken up is that as a matter of experience, you find that newly appointed members of the judiciary, even if they have no practice at the Bar, are not very much handicapped.

A. I find it very difficult to be dogmatic in one direction or the other on that particular point.

Q. But is it not your experience that a man, who does not know very much, turns out to be a good man after a year or two if he applies his mind and really tries to learn?

A. I should think so.

Q. Is it not your experience that all these things depend upon the man himself?

A. It depends upon the personality of the man concerned.

Q. If a man does not try to learn he will not learn?

A. That is so. I was an example, if I may say so, of the other type. I joined the judicial service under the old system and I was appointed as a District Judge. I used to hear appeals from the decision of a Subordinate Judge, who was a peculiarly able man, though I never tried one civil case in my life.

Q. Of course, want of experience is naturally a handicap in every thing, but do not you think that possibly it is rather exaggerated in the case of Civilian Judges?

A. As regards having practice at the Bar I should say so.

Q. You would strongly recommend that before a man gets a higher appointment in the judiciary, he should be put in for six years to try original cases, before being allowed to hear appeals?

A. I have put six years as a rough limit.

Q. Do you think it possible, in the Central Provinces, that Government would be able to spare a civilian for six years as a Subordinate Judge?

A. I do not see why the Government should not do that.

Q. Your idea is that a civilian should be trained?

A. Yes. I have strong personal feelings in that direction because I myself had no training.

Q. You know, of course, that of late years the Government of India have sanctioned certain concessions to members of the Civil Service to get training in the Chambers of practising lawyers?

A. Yes.

Q. You think that is useful?

A. Undoubtedly.

Dr. DeSouza.—*Q*. What is the practice now prevailing with regard to Civilian officers appointed to judicial posts? Do they get any preliminary training or do they get at once appointed?

A. Not now-a-days. They are trained as a Sub-Judge. They begin with Munsif's work. I had several Civilians under me.

Dr. Gour.—*Q*. What percentage of Civilians, Mr. Findlay, have been doing all this reading in chambers to qualify themselves for judicial work?

A. A very large number now-a-days.

Mr. Justice Stuart.—*Q*. I think this rule came into force only about a few years ago. It has not been in force long enough to see how it will work.

A. My recollection is that it came into force only 3 or 4 years ago. I am afraid I have not got very much personal interest in the matter.

Dr. DeSouza.—*Q*. Is a new Civilian appointed as a Munsif put in exclusive charge of a Munsif's Court or is he expected to do only such small cases as are transferred to him by the District Judge?

A. He is put in charge of suits under Rs. 100 in a certain local area. He does not work full time in that way. He is made to sit in another Court and see how the appeals are tried and the criminal work goes on.

Q. Has he got to pass any further departmental examination?

A. No.

Mr. Justice Stuart.—*Q*. With regard to appointments to the Supreme Court, you think that the appointments should in the case of Civilians go to persons who have had wide experience as District Judges?

A. Yes.

Q. You are against laying down any standard of work for the Courts below? Would you have any objection if it was understood that the standard would be applied reasonably? The laying down of a standard is very useful to those in charge of the administration when it comes to the question of asking for extra help. In our province the Greeven Committee appointed about 1907 or 1908 laid down a standard for Sub-Judges and Munsifs. It has always been understood that that standard cannot be applied in exceptional circumstances, but we find it very useful. We are then able to point out that such and such a man is working above the standard and should be given additional help. In that way don't you think that a standard is perhaps not a bad thing?

A. I have got no predeliction in its favour. I am afraid it will lead to a mechanical outturn of work.

Chairman.—*Q*. Do you think it leads to mechanical outturn of work?

A. I mean in the sense that there is a type of man who has always got statistics and the fear of remarks which come down periodically every three months from the High Court in his mind. He will delay taking up big cases.

Q. Is it not possible to check it if you had proper supervision of the District Judge and a moderate amount of intelligence in the High Court?

A. It will come to light only years after.

Q. What I mean to say is this. The High Court looks into the statements and says that such and such a man's outturn is very bad. But it could be pointed out that he had 2 or 3 heavy cases that year, that he has worked exceedingly well though his total outturn of work is undoubtedly below the standard. When it goes to the High Court, that ought to be put in as an explanation.

A. I can do that. But there is a type of man who will not take that course.

Q. Do you find people, for instance, refusing adjournments, decreeing *ex parte* and then restoring it on the ground that it looks better in satistics?

A. Personally I have not noticed it.

Mr. Justice Stuart.—*Q*. With regard to the question of cause lists and adjournments, in your experience do you think that a Munsif or a Subordinate Judge or District Judge or anybody else is handicapped in making a reasonable estimate as to how long a case is likely to last?

A. I think an average capable Munsif or Subordinate Judge ought to be able to make an approximate estimate.

Q. If the Judge is properly in touch with the Bar, is there any reason why he should not be able to fix that amount of work which can be done in the day? You think that overloading the file is not prevalent in this province, but in other provinces it is prevalent.

A. It is not prevalent here. The inspection system and the keeping of a judicial diary make for improvement now-a-days. We check all these things very carefully at the time of inspection of lower Courts and examine the records.

Q. The reason why I am taking this point is that in other provinces we have been told that it cannot be done at all, and that nobody can make an estimate as to how long a case will take. But you are of opinion that this can be done without any trouble. If the Judge is a man of reasonable intelligence and is on good terms with the members of the Bar, there is no reason why he should not be able to make an estimate and fix a reasonable amount of work for one day.

A. Of course I can only talk of my own province. In my province, I say, that this can be done and is being done at present.

Chairman.—*Q*. Is it possible to take up cases from day to day?

A. We always try to do that.

Q. Is there any difficulty about that from the witnesses' point of view?

A. Not here. There is no great difficulty in putting down sufficient work for the day and then to take up cases from day to day. If they are once told to do so, they will do it without any trouble.

Q. Is not the real explanation this, that if a Judge puts down too much work for one day and the people know that there is not much chance of cases being reached on that day, nobody brings his witnesses with him and accordingly applications for adjournment are put in and encouraged by the fact of putting down too many cases? If a reasonable amount of work is put down for one day, people can reasonably expect that their cases would be taken up on that day and there would be no application for adjournment.

A. Here the average litigant does not know anything if the average Judge puts down too many cases for one day.

Q. But the average litigant is pretty shrewd not to bring his witnesses for the first time because he expects that old cases will be taken up first and then most probably his case will be postponed?

A. But here the position is that when a Court fixes some work for the day he disposes it of on that day.

Mr. Justice Stuart.—*Q*. Your opinion is that if a Subordinate Judge puts down a case for hearing for the first time, it is usually taken up on the day for which it is put down?

A. Yes. But sometimes under certain conditions a case may not be taken up. In my own case I cannot always take up a case on the day for which it is put down because sometimes a sessions case comes and that has to be given precedence and the civil work has to be postponed.

Dr. DeSouza.—*Q*. How do you fix dates for evidence after the settlement of issues? Are cases generally taken up on the date fixed for that purpose?

A. That largely depends upon the distance at which the witnesses are living. If they are living near the Court then a short date is given, but when they are living at a great distance then a long date has to be given. There are remote places from which they have to come and so we have to fix dates extending over two months.

Mr. Justice Stuart.—*Q*. Do you consider that two months' date after the settlement of issues is a fairly long adjournment?

A. Yes.

Q. I know of some provinces where dates are fixed for two years on which witnesses are heard?

A. I hope Mr. Mitchell will agree with me that six weeks' time is a reasonable time.

Dr. DeSouza.—*Q*. Do you work on the diary system or prospective list system?

A. We have not got any suspense list, but we fix dates for particular cases to be heard on those days.

Q. If you take up cases in two months from the date of settlement of issues, there is no need for a *sine die* list at all?

A. Yes.

Mr. Justice Stuart.—*Q*. About the administrative work, do you think that there is a considerable amount of administrative work that the District Judge has to do in the Central Provinces?

A. That is tending to increase under the new conditions.

Q. Does it take about an hour or an hour and-a-half a day to get through your ordinary administrative work?

A. That is the minimum.

Q. Will not that depend upon the district?

A. That largely depends upon the district in which a District Judge is working. In some places it is heavy and in some places it is light.

Q. How long does it take at the place you are working?

A. There it is only child's play. I should think half an hour.

Q. Who does the accounts work?

A. The accountant.

Q. Do you check the accounts yourself?

A. Yes. They are comparatively simple here and there is no difficulty felt in doing that work.

Q. What about deposits and repayments?

A. That is done by the Court concerned.

Q. Then you find that the accounts work is not heavy here?

A. No.

Q. You lay great stress on the fact that the Judge must find time for inspection. How long does it take to inspect your Subordinate Courts? Does it come to 30 or 40 working days a year?

A. Inspection can hardly be done thoroughly in less than that period. Under the orders in force one is supposed not only to inspect the Courts of Subordinate and Additional Judges but also the Courts of Tahsildars who take up rent cases and are practically Civil Courts. Thus I have to go to Sarai Bari which takes me two days to reach there and so five working days are taken up for an hour's work.

Q. Is not the Deputy Commissioner quite capable of inspecting the work of Tahsildars and Naib-Tahsildars and seeing whether they are wasting time or not?

A. I should think that the Tahsildar's work should be inspected by the district staff.

Q. Have you to inspect the Sub-Registrar's office here?

A. No.

Q. In the United Provinces the District Judge has to do this.

A. It is not done here.

Dr. DeSouza.—*Q*. How many days do you take to inspect the Court of one Subordinate Judge? I want the average.

A. The average is one day but the Court of a Senior Subordinate Judge takes two days, and then the inspection of office takes a very long time. I have to inspect the nazarat, record room, etc., and I have also to inspect all the criminal record rooms. For some reason or other I have not got to inspect the Magistrate's courts but I have to inspect the Deputy Commissioner's record room once a year.

Q. Do you entrust the inspection of registers to your clerk of court?

A. Yes, I do, but I also see them myself and the important registers of civil suits and such other things I inspect myself.

Mr. Justice Stuart.—*Q*. Is there any disposition on the part of the Subordinate Judge to resent his inspection by your clerk of court?

Mr. Mitchell.—Is there a general practice for the clerk of courts to inspect part of their work? Do you allow your clerk of court to interfere?

A. Never. Moreover there is no reason for the Subordinate Judges to have any ill-feeling in that connection. When I first started inspection I found the register of civil suits in a deplorable condition and therefore I personally saw such things myself.

Mr. Justice Stuart.—*Q*. In any part of the Central Provinces has the District Judge sufficient work to justify the appointment of an officer in the nature of a Registrar to help him in his administrative work?

A. I think so. You are referring to Central Provinces excluding Berar?

Q. No, including Berar.

A. This is really a new matter for me.

Q. You see the point is this. Should the District Judge have more work than he can get through: do you think that it would be an advantage if a man of the status of a Munsif—a young lawyer—should be given to the District Judge as his personal assistant in his administrative work as a staff officer? I think you would find him very much more useful than a clerk of the court.

A. Yes.

Q. Of course it would entirely depend upon the amount of work. If in a district the administrative work is very heavy, and in consequence neglected, and the inspection work is hardly done at all, then in your opinion could the Registrar system be of special advantage there?

A. Well, it is a new question to me. I have no experience of this.

Dr. DeSouza.—*Q*. Have you to devote much time to your Guardian and Wards cases?

A. When I was District Judge in Jubbulpur I had to do this work but when I came to Raipur I did not find it much. On the other hand in Jubbulpur it was becoming distinctly heavy.

Q. Is there a considerable amount of management work of the estates of minors for which the District Judge is entirely responsible?

A. There are two divisions of this work which are considerably heavy as compared with others. The one is the question of the appointment of a guardian. Two men fight for the little girl's money and we have to decide who should be appointed her guardian, and the second is accounts. There are very difficult things in these cases.

Q. Do you have to decide the question or sanction the marriage of a minor and to see whether the bride is a proper one or sanction the repairs of a dilapidated house?

A. I am glad to say that I have not to decide this class of problems.

Q. That being so, if a responsible assistant be given to the District Judge he would be able to decide such matters which are I am afraid being done in these days by the clerk of courts.

A. Yes.

Sir T. Desika Achariyar.—*Q.* Do you think that the guardian cases could well be tried by Subordinate Judges?

A. I think so. The District Judges can also be relieved in this way.

Q. If the District Judge is to be relieved of any of his duties for inspection work, would it not be better to take guardian or ward applications from him and have them tried by some other judicial officer?

A. Undoubtedly so, and this is the direction in which we are going in this province. In heavy districts—even in Jubbulpore—these applications go to the Additional Judge there.

Q. Do you not find that some of these guardian ond wards applications are within the jurisdiction of the Munsifs?

A. Yes, many of them are small.

Chairman.—*Q.* I suppose you constantly get these applications—to sell some property. People take all these guardian and wards cases to the court because they want leave of the District Judge to sell some property which they have. Isn't that a kind of case which comes to you occasionally?

A. Very often.

Q. You are able to pass some sort of order. Do you give the guardian liberty to sell it at a certain price and then you make him submit a scheme for the education or for the living of the minor? Does he work out a proper scheme, or does he simply, in most cases, sell the property, and professes to invest the necessary balance in what he considers to be suitable?

A. In a case like that we get the guardian to render a careful account annually.

Q. Do you think that anything can be done by insisting upon every guardian having for his guidance a scheme as regards expenditure? In many cases they may be necessary, but a man comes a year afterwards and says that he has expended so much on this and so much on that. You are entirely in his hands unless he has got some instructions to begin with. Do you not think that under the Guardian and Wards Act, very little is done in looking after the minors?

A. My experience is that it is ineffective in practice, and it is the practice to require a statement at the end of the year.

Sir T. Desika Achariyar.—As a matter of fact under the Act you must say that so much money should be allotted for the education of the minor, and so much for the maintenance of the family and you have to take a bond from the guardian who is appointed?

A. Yes. But the difficulty is that those terms are nominally complied with and it is impossible for the Court to check them unless there is some local enquiry.

Dr. DeSouza.—*Q.* Are the guardians, you mention, private guardians? Do you also have *ex-officio* guardians?

A. No, only private guardians. Of course, so far as my present division is concerned these questions hardly arise.

Mr. Justice Stuart.—*Q.* You will find a registrar exceedingly useful. You will be in considerable doubt whether property is being sold at a sufficient price. You would be able to send the registrar, it might be a couple of days journey and you might not be able to go yourself. I think there is a great deal in this idea of Registrar.

Dr. Gour.—*Q.* Supposing the Registrar is to see whether it will be profitable to the minor or not, would not this eventually throw the responsibility upon the District Judge, who will have to find out whether the guardian was right or the Registrar?

A. I fancy it will.

Q. Supposing we suggest a plan that the guardianship cases should be, according to the pecuniary value of the estate, tried by the District Judge and the Senior Subordinate Judge, District Judges taking over cases over rupees ten thousand—or whatever the valuation may be—and the Senior Subordinate Judge taking all cases below that. Do you not think that it will give District Judges more time to deal with only important cases leaving less important cases to the Subordinate Judges?

A. It might, I think.

Mr. Justice Stuart.—*Q.* You note one point that under the present conditions more and more work is being thrown upon the District Judge, which was never contemplated at the time the duties were originally assigned, for example, matters connected with elections. I think you agree with me that the tendency now is that whenever any new duty arises the usual rule is to hand it over to the judiciary?

A. I noted that point because I find that before the last election I had to sit for three days doing what I may call a futile mechanical work, correcting an electorate roll. I may say that the performance of such duty by a highly paid officer is waste of time and money. Such work, I think, might be done by a very junior barrister.

Dr. DeSouza.—*Q.* I suppose you get similar work in regard to municipal election?

A. No.

Mr. Justice Stuart.—*Q.* Do you think that panchayat courts are likely to work fairly well in the Central Provinces?

A. Only in certain parts.

Q. But you think that experiment may be successful in some places?

A. In some districts only. Not in many districts and I particularly said in certain parts of the province.

Q. Are there many aboriginal inhabitants?

A. There are Gonds and others. They are advancing slowly but not quite to the stage of the panchayat.

Q. I want to take you to two other points. Do you think that it will be possible and feasible to endeavour to introduce a system of registered addresses? In the first place, of course, you must get a man before the Court. You cannot proceed *ex-parte.* Once you have secured his presence, you tell him "You have to give to Court a registered address to which all notices will be issued and if you change your address it is your business to let the Court know it. No excuse will be listened to, of non-service, if you change your address without informing the Court." Then all notices can issue to him at that registered address right up to the end of the suit. Do you think that is quite feasible? It is in practice in certain provinces, but I want to know whether it will be feasible in the Central Provinces?

A. I cannot quite say in the case of the class of litigants we have to deal with here.

Q. Don't you think it would be a good thing in appeals to send the notice to the respondent to his registered address?

A. It could be applied only to an extraordinarily limited extent.

Q. It would not necessarily follow that the notice would be served by registered post. The point is this. If he has given his registered address and if the man is not found in the village, a copy of the notice would be affixed on the man's house and he cannot afterwards come and say "I was not in the village and I did not know it."

A. I should think it possible that under certain conditions the proposal would save time. I do not think in the Central Provinces it would make much difference one way or the other.

Q. Would you carry it out in execution?

A. I think so, if there are suitable conditions.

Q. The objection raised so far is that it is very hard on a poor man to require him to inform the Court of his change of address. Do you think there is much force in that?

A. In a great majority of cases, the average litigant does not change his address.

Q. What is your opinion of the qualifications of your subordinate judiciary—the senior members? Do you think they are fairly good?

A. I think the new lot are quite good.

Q. Do you think that it would work in practice if two selected Sub-Judges were appointed on a Bench, say, one at Amraoti and another at Akola, who would hear all appeals valued at Rs. 1,000 and under and whose decisions will always be final on facts and law? They will be taken away from the district judges and all second appeals should cease up to Rs. 1,000.

A. It is a very novel suggestion to me. I should be prepared to accept it as regards facts; but as regards law they should be able to refer them to the High Court.

Q. Yes, I would add a qualification that they would have permission to state a case.

A. I shall consider and give my written opinion on the point.

Sir T. Desikachari.—*Q.* I was going to ask you for some information about the distribution of work. I see from a list given to me that work is distributed among the various Judges according to Rs. 500 or Rs. 1,000 jurisdiction and so on. How do you manage it? Do Munsifs have territorial jurisdiction?

A. Yes, to a large extent.

Q. According to the new Act they have got pecuniary jurisdiction to try all suits up to Rs. 5,000.

A. Yes.

Q. But I find from the distribution list that some Munsifs try only suits up to Rs. 500, some up to Rs. 1,000 and some up to Rs. 2,000 and so on. How is that arranged?

A. It is arranged roughly on the following lines. To a Junior Sub-Judge up to a certain stage—I forget the exact limit—I do not entrust cases up to Rs. 5,000. To the juniors we give them up to Rs. 500. Then we get another stage as regards such and such a man. I write to the Judicial Commissioner that he may be allowed to try suits of more value. We judge them on their personal qualifications. It is always very difficult to look to distribution of work. He may be quite capable of trying suits up to Rs. 5,000, but he would have too much already. All sorts of considerations like that come in.

Q. And the distribution that you make is distribution which is recommended to the Judicial Commissioner and approved by him. Is that the way in which it is done?

A. Yes. It is approved by him. But I can make a change within the general orders. I could not give a Junior Munsif cases up to Rs. 5,000. I report any change monthly to the Judicial Commissioner.

Q. So that in the Munsifs' or Subordinate Judges' Courts here if a judicial officer is posted to a station, he does not being work right up to Rs. 2,000 or Rs. 3,000 as in other provinces?

A. No, you feed him up to it.

Q. I suppose that is the rule which applies also to the Small Cause Court jurisdiction.

A. Yes.

Q. What jurisdiction is given to a Subordinate Judge?

A. Well, ordinarily he is invested with powers up to Rs. 100.

Q. That is the jurisdiction with which a Subordinate Judge is invested when he is appointed as such?

A. Yes, but you cannot take down a general rule, because it all depends upon the local conditions of the area and it also depends upon the man on whom these powers have to be conferred. In one tahsil you can invest him with Rs. 100 but in the next tahsil it is possible to invest him with Rs. 200. It depends upon the conditions of the area under his jurisdiction. We work on general rules of empowering Subordinate Judges according to their capabilities and experience.

Q. According to the Act, Subordinate Judges can be empowered to try Small Cause Court suits up to Rs. 500?

A. Undoubtedly.

Q. Who deals with succession certificates? Are they disposed of by the District Judge?

A. No, by the Additional District Judge.

Q. Why should not Subordinate Judges take them?

A. They are specially empowered to take them and we have got a law of devolution in that respect.

Q. What about testamentary work?

A. That is also done by the Additional Judge here. That also depends upon other work that the Judge has to do. As he has to do criminal work so he has to hand over this work either to the Additional District Judge or the Senior Subordinate Judge.

Q. So you can devolve that work upon Subordinate Judges?

A. I think so and I have mentioned that in my statement.

Q. What about land acquisition cases? Do they occupy any portion of the work of the District Judge?

A. They do. Last year that was a very heavy item because of the widespread irrigation scheme.

Q. Do you not think that they can be well diposed of by Subordinate Judges? Are they more complicated and troublesome than the ordinary cases?

A. Well, I think they are fairly important suits. The District Judge has to do that work so long as the other important work does not suffer. They are very troublesome and difficult cases.

Q. So that you think that it is advisable to have these cases yourself or that these cases should be tried by the District Judge only?

A. Yes, they are highly ticklish in places like Rai Brari where the land has to be reckoned as for agricultural purposes and also for building purposes.

Q. Cannot the Senior Subordinate Judge be safely entrusted to take up that work?

A. Yes, I prefer to give that work to the Senior Subordinate Judge.

Q. At present the Additional District Judge can do it?

A. Yes, under the special law. I think he has all the powers.

Q. Are suits against Government tried by the District Judge?

A. They are tried in the ordinary way.

Q. I wish to ask you whether you are in a position to take up original civil suits. Do you try original civil suits?

A. No, I do not think it is possible to try original suits. The only suits that I have been trying are divorce cases. There are some places where the District Judge can try original civil suits, but it is not possible at every place. In Soini, the District Judge tries a fair number of these suits.

Q. So far as you are concerned, it is only the sessions work that prevents you from doing original work. Is it not advisable that the District Judge who has administrative control over judicial officers should try original cases himself?

A. I do not think it is advisable.

Q. Are there many District Judges who never have any opportunity to try original cases?

A. In our Central Provinces system there is a majority of District Judges who have tried a number of original cases and probably are still trying them in Jubbulpore division and other places.

Q. What prevents you from taking up original cases in your present charge?

A. The heavy amount of sessions and criminal work.

Q. Cannot your sessions work be advantageously devolved upon the Additional District Judge?

A. Only a small amount of sessions work I transfer to the Additional District Judge and roughly speaking the ratio can be 3 to 1. If I give them a large amount of criminal or sessions work it will interfere with their civil file unduly. If the original work is taken up by the District Judge, then the civil appellate work is horribly upset.

Q. So in your present charge original suits are being tried by the Additional District Judge?

A. Yes.

Q. With regard to the training of civilians, do they get any civil suits to try just as they are given third class magisterial powers in the beginning?

A. Well, I do not know, because I think that when a young civilian starts he has three branches to work in. He has got magisterial work, then the revenue work actually trying third class cases dealing with *Mukadam* cases and then he has got departmental examinations. If he is under some Deputy Commissioner then he has to do some work in connection with sanitation and looking after the municipality work. He has also to do some office work. I think they are already over-worked at the start and the imposition of this duty, *i.e.*, of trying civil suits would add to their already heavy burden.

Q. After how long would you entrust a civilian with this work?

A. It largely depends upon the departmenal examination. I think he should take up this work after two or three years' training and he should be made a District Judge only when he has got nine years' experience at his back and when he has attained the age of 33 or 34.

Q. When will you ask him to do civil work? Would you relieve him of his magisterial work during the time he does civil work?

A. He must learn something about the local conditions of the area in which he has to begin work.

Q. But you agree with me that he must have experience in judicial work before he begins work as a District Judge.

A. Yes.

Q. He must have more judicial experience than he has at present?

A. Yes.

Dr. DeSouza.—*Q*. Who controls the nazarat in your district?

A. One of my assistants—the officer in charge of the process-serving establishment.

Q. What assistant do you employ for the purpose?

A. One of my Subordinate Judges. One of the Subordinate Judges is put in charge of nazarat, one in charge of the record room and one in charge of the copying department.

Q. Have you got a central nazarat, *i.e.*, one nazir serving all the Courts situated there.

A. Yes.

Q. How many Courts are there in Raipur?

A. Four. I have two Additional Judges and 11 Subordinate Judges under my control.

Q. Four courts including your own are served by one central nazir?

A. Yes.

Q. Here I notice one of your circulars. According to it you have a first class process-server and he is not supposed to serve processes, notices, summonses or warrants but his business apparently is according to the circular to check the process-serving done by the second and third grade process-servers.

A. That was the system but it is now abolished and they are thinking of introducing it again.

Q. I understand they are going to continue the old system again. Would you kindly give the Committee an idea how the system is employed there, *i.e.*, how the first grade process-server checks the process-serving done by the second and third grade process-servers?

A. We have got district circles. One man is allotted three days and then to come back, while another man is given 20 days for a remote place and this man—the first grade process-server—is supposed to travel like Travelling Ticket Inspectors. He is supposed to pay unexpected visits and to find if the real persons are being served.

Q. How does he check?

A. By meeting them in the way and by seeing the persons to be served.

Q. Then such a class would naturally be of superior qualification and of superior social position than the second and third grade process-servers?

A. No, that is my difficulty. His pay is from Rs. 12 to Rs. 18, and after a long service he will have the glorious pay of Rs. 18.

Q. From this checking system is any fraud brought to light by the checker?

A. Occasionally, but in many cases the checker himself requires checking.

Q. According to the circular you are entitled to appoint an official on a pay of Rs. 30 to Rs. 100 for the checking of process-servers?

A. No, I have to get special sanction for that purpose.

Q. No, the circular empowers you to make this appointment?

A. I do not think so. If I thought I could do that, I would employ one to-morrow but I am certain next month the Controller will cut the bill down. So far as I am aware I have to get special sanction.

Written Statement of Mr. F. E. SANJANA, Advocate, Amraoti.

1. A. *(i) High Courts.*

First appeals, one year.

Second appeals and miscellaneous civil appeals, six months.

(ii) District and Sub-Courts.

ORIGINAL SUITS—

(*a*) Title suits, six months generally; one year in complicated cases.

(*b*) Money suits, six months.

Regular appeals, six months.

B. Claim proceedings, etc., six months.

2. The period actually taken now for the disposal of these proceedings exceeds the reasonable limit in many cases, the main causes of the delay being non-service of defendants and witnesses and sometimes the congested state of work.

4. All Munsifs should be recruited from members of the Bar, who have practised for not less than five years. The selection should be made by a committee consisting of the District Judge and Senior Sub-Judge, who should report the names of persons selected by them to the High Court for appointment. Promotion to the grade of Sub-Judges should not be as of right. Only such Munsifs as are found to be efficient should be promoted to Sub-Judgeships. Competent members of the Bar having a practice at the Bar of ten years and more may directly be recruited as Sub-Judges.

6. Too frequent transfers do necessarily impede justice, as a judge who is transferred to a new file has to go over and study from the beginning cases which could have been finished easily by the Judge transferred.

8. In our District this question does not arise as there is no concentration of many Civil Courts. Very seldom have courts to wait for members of the legal profession, and some courts never wait at all for them.

13. There would be no objection to invest Senior Sub-Judges with jurisdiction to try probate and succession certificate proceedings and land acquisition proceedings from the public point of view. Only senior officers should be invested with these powers.

15. The following suits should be made triable by Small Cause Courts:—

(*a*) All suits for the recovery of rent.

(*b*) Suit by one of several joint mortgagors of immovable property for contribution in respect of money paid by him for the redemption of the mortgaged property.

There would be no objection to suits relating to partnership with small capital being dealt with by these Courts.

18. The right of appeal granted at present should not be curtailed except in purely money suits of the value of Rs. 200 and below tried as regular suits.

22. The power given under Order 41, Rule 11, is very rarely exercised.

25 and 28. Service of summons should be effected as ordered by the Civil Procedure Code. In addition a copy of the summons should be ordered to be affixed to the Chaodi or some public place. Service of summons cannot be effected generally because of the temporary absence of the defendant from his village. The headman of the village should be supplied with a copy of the summons to be served on the defendant when he turns up after the process-server has left; the headman should keep a register of summonses to be so served and should always take the thumb impression of the defendant in his register in token of such service. Service through post should always be resorted to whenever there is a Post Office or reasonable chance of the service being effected even when there is no Post Office. But service through post must be in addition to the ordinary method now in use.

As soon as one process-server returns with the summons unserved, the district nazir should make it a point to send another summons with another process-server as the defendant when he has evaded service once in collusion with one server thinks himself safe and does not keep away from his village till the date fixed for the case.

29. No; it would not be advisable.

30. This suggestion does not seem to be very practicable. Few litigants will be found ready to lose a great deal of time by accompanying the process-server to some distant village to effect service on the defendant. Moreover unless the district nazir can send the process-server to the pleader on a

fixed day after payment of process, the party issuing the summons will not know when the process-server would be available and much time would be lost and inconvenience caused to the party and the process-server.

32. The provisions of Orders XI and XII, Civil Procedure Code, are very much neglected in Berar, the main reason being the backwardness of the litigants in education and their incapacity to understand and follow the provisions of those chapters. It is only in big towns that these provisions are likely to be strictly followed and insisted upon.

33. This procedure would cut down much unnecessary evidence. In fact in some cases after parties are thoroughly examined as witnesses there will be no necessity of any evidence. Even before issues are framed it would be more advisable to examine the parties personally to determine the points in issue.

34. A person summoned as a witness in this province, if he is not examined on the day of his appearance in court, is ordered to be prepaid for the next hearing and generally appears on that date and if he fails to do so, he is ordered *to be arrested* under a warrant.

35. It sometimes happens that a party calling a number of witnesses is ultimately not able to prove anything by their evidence. The costs of such witnesses should generally be saddled on the party calling them independently of the result of the case unless the court has reason to think that they have been tampered with by the other side. But in order to apportion the costs exactly and accurately the ministerial staff may have to be increased. The only means to control the citing of a large number of witnesses is to examine the parties thoroughly and in detail even before issues are framed and to examine the parties as witnesses before witnesses are cited and examined.

36. In the class of cases referred to in this question, affidavits should be the primary mode of proof, as there is no reason why affidavits should not be considered sufficient proof in such cases.

37. The suggestion is not practicable.

40. It is not possible to throw the duty on a legal representative to come forward and request the court to add him as a party, as it would be very difficult to prove that he was aware of the proceedings. Any such attempt would only lead to much perjury on the point of his having or not having knowledge of the proceedings.

41. The delay caused by the difficulty of appointing a proper guardian *ad litem* is often very great, especially in cases where there is no real defence, the object of the natural guardians of the minors being to protract the litigation as much as possible so as to delay the passing of a decree against the minor defendant as long as possible. I entirely approve of the suggestion that the plaintiff should be made to name all possible guardians in one petition and notice should be ordered to go to them simultaneously and the one best fitted should be appointed by the court at the first hearing of the suit from amongst such of them as appear on that day and on none of them appearing the court should at once proceed to appoint an officer of the court as such guardian.

42. The practice of granting *ex parte* injunctions and orders is never taken undue advantage of in our province. In fact injunctions are not granted as often and as early as they should be in urgent cases so that the mischief which is sought to be prevented is completed before the injunction is granted. Similarly attachments before judgment are very rarely granted with the result that the defendant or debtor as soon as he apprehends that a suit is likely to be filed against him disposes of his property to some relation or friend with the result that when a decree is obtained and attachment of defendant's property sought, claim petitions come in and then suits under Order 21, Rule 63 and appeals from the decrees in such suits naturally follow. All this litigation would be stopped in many cases by the judicious granting of *ex parte* attachment before judgment especially when property sought to be attached is im-

movable property. Many cases are even compromised out of Court when attachment before judgment is granted.

43. No.

44. No.

45. Generally by Judges. No delay is caused by dates being fixed not by Judges themselves but by the reader of the court.

46. Yes.

47. No. Only when commissions are issued to witnesses residing out of this province much time is taken up before the commission is returned. I would not add to the powers of commissioners.

48. Written applications supported by affidavits for adjournment will be of some effect in checking the request for adjournments, but they should be insisted on only when the court is satisfied that an adjournment is unnecessarily asked for. Generally nominal costs are allowed at the time of granting adjournments and the payment of costs is never enforced, the party to whom costs are allowed being asked to seek execution if he wants to realize them. The payment of fairly substantial costs should be made a condition precedent to the granting of adjournments.

49. Suits are often fixed for hearing continuously day by day, and courts sometimes fix no other cases for such days. But generally the whole number of witnesses does not turn up with the result that the case which is fixed for two or three consecutive days does not take one day even and on the following day the court has no work to do. When however witnesses are present courts generally take them continuously from day to day even if the case is fixed to be taken on one day only.

53. When the question is between the decree-holder and judgment-debtor only, the latter should not be allowed to raise the question of jurisdiction when he has not done so in the beginning, but if the rights of innocent third parties are likely to be affected, the principle should not be made applicable.

54. It is extremely desirable that courts to which a decree is transferred for execution should be invested with powers referred to in the question; but the executing court should always inform the court passing the decree of all orders passed by it, so that that court may make all necessary changes in its Registers.

55. Yes.

56. The period should be cut down to six years, it should not be necessary to apply every three years, or one year and if an application under Article 182, Limitation Act, is to be retained the limitation should be one year and the starting point for limitation should be altered from the date of the last application to the date of the last order on the last application.

57. The rule laid down in section 66, Civil Procedure Code, should not be extended and further as, if a defendant is not allowed to show that property in his possession was purchased benami for him, courts will be assisting a person who does not come into court with clean hands to perpetrate a fraud or rather to carry out and complete a fraudulent transaction which the parties themselves had left incomplete. Courts should not be made the channels for carrying out or assisting fraud.

58. Alteration suggested is desirable, as pleas of such payment out of court are generally false and made with the object of delaying execution of decree and are never substantiated by evidence.

59. Yes. Execution may be allowed to the transferee on his filing an affidavit. The second proviso should not be deleted if the object of doing so is to allow the transferee judgment-debtor to execute the whole decree against the other judgment-debtors. The transferee should not be allowed to proceed against the other judgment-debtors except by suit.

60. Courts generally exercise their discretion in favour of the judgment-debtor and there are hardly any instances in which both processes are issued at the same time.

61. (A) If the period under Article 182 of the Limitation Act is reduced from three years to one, there will be no necessity of notice on account of the lapse of a year from the date of the decree; even if the period is not changed there does not seem to be any reasonable ground why a notice should be issued on account of more than one year having elapsed after the passing of the decree.

A notice however would be necessary when the decree is sought to be executed against the legal representative of the original judgment-debtor.

(B) There seems to be no valid objection to the rule being deleted except perhaps in so far as a notice to the legal representatives of a deceased judgment-debtor may be considered necessary.

62. No change seems to be necessary to the rule in its present form. Discretion given by the rule is wide enough and no greater discretion is necessary if that now given is properly exercised.

63. One notice at the beginning of execution proceedings is quite enough. The judgment-debtor should then be obliged to be present at all subsequent stages of the execution petition. If he does not appear afterwards he should not be allowed to raise any objection later on to the execution proceedings.

64. There is no reason why writs of attachment and sale proclamations should not issue simultaneously. Notice of execution petition should be served on the party personally. Service on the Vakil who appeared for the judgment-debtor will not be sufficient as the engagement of the Vakil may be for the conduct of the suit only and even if otherwise, it will be extremely difficult to inform the judgment-debtor of the execution proceedings when he is living far in the interior in the mofussil and there is no proper postal communication.

65. No. The power of executing arrest warrants would be abused by village officials, especially as in each village there are two or more factions and the village officials would be likely to favour persons belonging to their faction and misuse their powers against persons belonging to the rival faction.

66. The suggestions made in this question are not practicable. Even if all persons holding encumbrances or mortgages of any property are joined it may happen that the claims of some of them may not have become ripe for suit and such persons would object to be paid off before the time fixed for payment. Moreover the puisne encumbrancer who brings a suit on his mortgage will never wish that the rights of all prior and subsequent mortgagees should be determined in the suit brought by him, especially of the prior mortgagees. Even if all mortgages are ripe for suit and the mortgagees are willing to have their claims tried in one suit, the result will be that more than two or three suits, all more or less independent of each other, will have to be tried together. Moreover, when properties are sold by court auction it is well known that they do not realize the full value that can be obtained by private sales, so that not only will the mortgagors suffer by such sales, but even the mortgagees will not be able to realise their monies in full. Final decrees are not necessary in simple mortgage suits and courts may at once proceed to sell the properties on the failure of the mortgagors to pay up the decretal amount within the time fixed by the decree. It is not necessary to pass a separate personal decree, such a decree may be passed when the original sale decree is passed, making other property of the mortgagor liable in case the sale of the mortgaged property does not satisfy the decree in full.

67. If appellate Courts dispose of appeals quickly and exercise their discretion properly in granting or refusing applications for stay of execution, no hardship will be caused. Some appellate courts grant stay orders as a matter of course and others refuse equally as a matter of course without much consideration as to the merits of each application. A wise use of discretion on the part of appellate Judges is all that is necessary. I would, however, suggest that when the execution of a decree for immovable property is stayed, the judgment-debtor should be asked to give security for such crops as may be fixed by consent of both parties and he should not be allowed to challenge the

amount fixed when the appeal is decided against him. If the decree-holder is prepared to furnish security for a higher amount than the judgment-debtor is prepared to do, he should at once be put in possession and should not be allowed to plead that he got much less than the security given by him in case the decree is reversed. This will stop much unnecessary further litigation. In money decrees, as the execution is stayed on giving of solvent security, neither party is either a gainer or loser by the stay, and the only compensation that may be allowed is a higher rate of interest on the full decretal amount (usually the rate provided by the contract) than the court rate.

68. Security to the satisfaction of the court executing the decree may be taken in case the injunction is issued at the instance of the judgment-debtor.

69. The law as to insolvency ought not to stand in the way of the decree-holder getting the fruits of his decree speedily, if it is worked properly, rather it should assist him in getting them more speedily than by the ordinary execution of the decree. But the working of the Insolvency Law is not very satisfactory as there is no proper supervision of the work of the Official Receiver and to a great extent the decree-holders themselves are very slow in moving the Official Receiver to sell the insolvent's property or to avoid the transfers made by him in fraud of creditors.

70. No delay is caused by absconding judgment-debtors. Provisions about attachment before judgment in money claims if rightly used would be effective in preventing delay, and checking further litigation.

72. The law requiring mortgages to be proved by attesting witnesses is working great hardship. Attesting witnesses are won over by mortgagors by payment of large sums of money and are made to depose that they did not witness the execution of the mortgage bond by the executant. Mortgages which are all registered should be held to be validly attested unless the contrary is proved. Sub-Registrars may even be authorized to question the executants not only as to execution and receipt of consideration but also as to valid attestation by the mortgagor so that much perjury may be stopped, if the present law is to be retained.

73. There would be no objection to admit copies such as mentioned in this rule being admitted as secondary evidence. Again it sometimes happens that both parties to a suit have got private copies of previous litigations; if both parties agree that such private copies may be admitted on being satisfied of their correctness much unnecessary delay would be avoided, as certified copies generally take a great deal of time to procure.

76. Notwithstanding the frequent difficulty of proving oral partitions, the state of society in this province, at any rate of the litigant Public, is not so advanced as to make all partitions compulsorily evidenced by a registered instrument.

77. Even though the suggestion is not likely to be very useful as people will avoid the trouble of registration whenever possible, some other agency like that of a Notary Public may be started where parties may be compelled to register their names on payment of a nominal fee,

78. Yes, it does; but if a strict adherence to the letter of the Law is likely to result in injustice, the equitable doctrine of part performance should be available for preventing such a state of things. Laws when made extremely rigid and inelastic tend to become oppressive and must be relieved against.

79. No. Creditors who are generally unwilling to give any receipts will be much more so if registration of documents evidencing discharge of obligations is made compulsory.

80. I would suggest that no court should entertain a plea that any party executed a document unless it bears his clear thumb mark in the case of persons who cannot sign their names. If registration is made compulsory it will stop all transactions of any kind with illiterate persons.

81. In trying to prevent one kind of fraud, the suggestion made in this question will have the effect of encouraging another kind of fraud, and a man

who holds a sham document will be assisted by Courts of Law in perpetrating and perpetuating the fraud.

82. Court fees have been increased sufficiently already in this province. If, however, the court trying a case finds in its judgment that the suit was frivolous the plaintiff should be made to pay compensation to the other side, as it is well known that court costs do not at all represent the actual costs incurred by parties.

83. The provision that mortgages must be attested is a salutary one, but attestation may be made to include admission of execution by the mortgagor in addition to the strict meaning put on the term.

84. It is doubtful if it is possible to prevent champerty and maintenance. In the case of poor persons who are kept out of possession of their property by trespassers without title, it would be extremely difficult for them to recover their property, unless they could find some one to finance their litigation and no one will do so and take a change of failure in some cases unless he has an expectation of making a reasonable profit from such venture. The only point is what would be considered reasonable in each case and whether the transaction is a fair one or is unconscionable.

85. Where the decision of the case depends on technical expert knowledge a reference to referees would be advisable.

86. There is no doubt about it. In the present bewildering state of contradictory authorities on almost every question of law, justice cannot be expected to be speedy. No unauthorized publications should be allowed to be quoted or referred to by any Judge.

87. I do not think it is safe to codify any law; the effect of codification of a Law is to make it inelastic and incapable of amendment even if it is found to be wrong in some particular unless there is again a change in the Law.

Mr. F. E. SANJANA, Advocate, Amraoti, called and examined on Friday, the 18th July 1924.

Sir T. Desikachari.—*Q.* You are practising at Amraoti?

Mr. Sanjana.—Yes.

Q. Barristers practise there or High Court Vakils?

A. Both.

Q. Is the Bar overcrowded there?

A. There are about eighty of us.

Q. Are there any who have recently joined the Bar?

A. Many are coming in.

Q. Have they any training in procedure or drawing pleadings?

A. No.

Q. Do you think anything can be done for their training?

A. Yes, if you make their training compulsory under the seniors.

Dr. DeSouza.—*Q.* Can you make the seniors to take juniors?

A. That is unfortunately not possible.

Chairman.—*Q.* Would there be enough people in senior practice to be able to accommodate all young people?

A. Some would be seniors and some would be juniors and some would be in between.

Q. You will have to lay down that in the first couple of years he must go with a man, say, with ten years' practice. It is very difficult to check whether a man of ten years' standing would really be worth his work?

A. It would be difficult indeed.

Sir T. Desikachari.—*Q.* There is a sort of apprenticeship in the High Court?

A. I have not practised here, but I think there is.

Q. And there are seniors available to take up juniors as apprentices?

A. I think there are.

Q. If we make a rule that new practitioners should apprentice themselves to the senior practitioners there would be seniors forthcoming to have them?

A. I think there will be, but the question would be whom to call seniors and whom to call juniors.

Dr. Gour.—In the Calcutta High Court any Barrister of fifteen years' standing is called a senior. You will have to make an artificial rule.

A. Yes, an artificial rule will have to be made.

Sir T. Desikachari.—*Q.* Are there any touts?

A. To some extent there are.

Q. Is there anything that the Bar Association has done to put down the touting?

A. Some persons are reported to the district judge and they are declared to be touts, but they work all the same.

Chairman.—*Q.* All that means is that they are prohibited from coming to the Court?

A. Yes.

Sir T. Desikachari.—*Q.* I think more can be done?

A. Yes.

Q. What can be done?

A. By the Bar itself.

Q. I may tell you that there is a clause in section 13 of the Legal Practitioners Act which renders legal practitioners, who resort to touting, liable to dismissal.

A. It is very difficult to put that in practice.

Chairman.—*Q.* Would you very much object to this—that when a man, who has been after due process declared to be a tout, comes up after that, having carried on business as a tout, he should be liable to punishment for a criminal offence?

A. I think that is possible.

Dr. Gour.—*Q.* There was a proposal of the Government of India that such men would be liable to six months' punishment, but that was never put forward before the Legislature?

Chairman.—I know that there was a good deal of attention paid at one time by the Government of India to amending the Legal Practitioners Act. I think that is not unreasonable because the man gets a very good warning. Of course in the case of any member of the Bar, who is found to be helping touts, you can deal with him under the Legal Practitioners Act?

A. Yes.

Sir T. Desikachari.—*Q.* Do you not think that touts are responsible for some of the useless litigation?

A. Largely. They foment litigation at times.

Chairman.—*Q.* Do the patwaris foment litigation?

A. Yes. I am not in the Central Provinces, I am in Berar. There are men who are called village barristers and they do foment litigation.

Dr. Gour.—But these are not patwaris necessarily.

A. They are village wisemen who are in the habit of taking up a case and charging as fees more than that charged by the members of the Bar.

Chairman.—*Q.* Is not that an offence?

A. The man says "You are entitled to a certain share, I will show you a way if you pay me five thousand rupees." He gets a share in the whole concern.

Sir T. Desikachari.—*Q*. With regard to pleadings, are they drawn up properly?

A. I think so.

Q. Do you use the provisions regarding discovery and inspection?

A. No, I am sorry we do not.

Q. Would the training of young vakils in the course of apprenticeship help this matter?

A. It is due more or less to the ignorance of the litigants themselves. They do not know what documents they have to rely upon and far less they can know the documents of the other party. After a case has been going on for a long time then even they bring in certain documents.

Q. Do you use the interrogatory sections?

A. They are used at times.

Q. Are the parties examined to elicit information from them?

A. Some judges do, but generally they are satisfied with the written statement. If they want anything further they examine the pleaders and not the parties and elucidate the matter further.

Q. At the time of settlement of issues, is any enquiry made? Do the judges want any information as to what is the point really at issue?

A. Some judges do not like that. They do not like issues prepared by the pleaders.

Q. What is the usual procedure?

A. The usual procedure is for the judge to frame issues.

Q. You think that the main cause of delay in the disposal of cases is non-service of processes?

A. There are three or four causes. The chief cause is the non-service of processes. Then when the man is served there is some difficulty under section 7 of the Court Fees Act—clause 5, I believe—and that leads to lot of trouble.

Q. What is the difficulty?

A. There are certain decisions of the High Court, I think, following the Allahabad High Court. The decision says that when you sue for a portion of the field you must pay on the market value. We do not know in which court we have to institute a suit.

Chairman.—*Q*. You are talking now of Berar?

A. Yes.

Q. You have got rules under the Valuation Act covering land valuation?

A. 12½ times will govern cases where the land is assessed to revenue in the Collector's register.

Q. What is your difficulty?

A. We are asked to state what is the jurisdiction in the suit itself. We say it is according to the market value. Then it is sent to the court having jurisdiction. Then it takes up the case. The defendant comes and objects that the court has no jurisdiction and that the market value is not proper and that it ought to be 10 times assessment or some such thing. Then the case has to be sent to another court.

Dr. Gour.—*Q*. Is it not done very often to gain time?

A. Yes.

Chairman.—I don't see how the Judges can help it under the present law. In any case the second class Sub-Judge is supposed to have jurisdiction up to Rs. 5,000. The litigants will look at the court as a second class Sub-

Judge's Court but not whether he is a young Sub-Judge. The litigant has nothing to do with it in instituting the suit.

A. Yes.

Sir T. Desikachari.—*Q*. Under the present Act are not all Sub-Judges entitled to take cognisance of suits up to Rs. 5,000?

A. They are.

Q. It is only for administrative purposes that they are asked to try certain suits up to a certain value. The trial has got nothing to do with jurisdiction?

A. When an objection is raised that the court in which the suit is instituted has no jurisdiction, that court sometimes thinks that it has no jurisdiction and tries to send it up to another file.

Q. With regard to this question of valuation, have you any constructive suggestion to make as to whether any rule might be made or the law has to be altered? What is the remedy that you would propose?

A. I would propose that section 7 (5) may be suitably altered.

Q. You say another cause of delay is process service. What is the nature of the delay?

A. The defendant generally knows when a suit is to be filed against him and he manages to avoid service.

Q. How would you propose to remedy this?

A. I think service through post may be followed wherever possible. As soon as one process-server has brought a report saying that the man is not served, another may be sent. I would also propose that the headman of the village might be entrusted with a copy of the summons because it often happens that the man is only temporarily absent and the headman may give the copy of the summons to him as soon as he returns to the village. Precaution must be taken that his thumb impression is always taken.

Q. Then the headman must maintain a register showing the summons served?

A. Yes.

Mr. Justice Stuart.—*Q*. Would it not be simpler if the process-server when he goes to the village and does not find the man, simply hands over the summons to the headman and comes back and reports to the court saying that he has done so? Why should he bring back the summons and then send it?

A. It can be done like that.

Dr. Gour.—*Q*. Would the headman do the work without payment?

A. He should be paid. It should be made a part of his duties.

Sir T. Desikachari.—*Q*. What about the Post Office? Why should you not send the summons through the Post Office?

A. I have suggested that it should be sent in addition to the ordinary summons and not in substitution.

Q. The ordinary summons should be left with the headman in case the defendant is not available?

A. Yes.

Q. You have given answers to various questions. I am taking those questions only in which I feel any doubt as to what is actually meant. With regard to examination of witnesses, you are of opinion that a large number of witnesses are cited and very few are examined?

A. Yes. When they are examined they do not support the party calling them.

Q. In that way a lot of time is wasted?

A. Yes.

Q. How would you prevent it?

A. As I have said the costs of these witnesses might be saddled on the party calling them.

Q. The party calling them might call them to prove half a dozen points. Some of them may be proved and some not.

A. I am told that in the Bombay High Court there is a system of taxing costs. You can disallow costs of witnesses also and even disallow costs for wasting time. But the trouble is we have not got a taxing officer.

Q. You simply apportion costs. I will give you ⅓rd and you suffer ⅔rds for having called an unnecessary witness.

A. Yes.

Q. Is there anything that prevents the judge from doing anything in that way?

A. He does not like to do so. There is nothing to prevent him and he can exercise his judicial discretion. But at the time of writing judgment, he should make up his mind as to how to apportion the costs.

Q. Are there no daily fees here?

A. No daily fees are paid here.

Q. Why cannot the judge discourage that?

A. But five per cent. is the only fee.

Q. He can allow special costs?

A. There is no provision about that.

Q. You seem to think that if attachments before judgment are freely granted, there will be less litigation?

A. I think so. Attachments before judgment are asked generally when the defendant is going to transfer his property. They are not granted as often as they should be. It is my opinion that if they are granted, attachment takes place and there is no alienation.

Chairman.—*Q*. I think the difficulty is that the fact that the defendant is going to transfer his property cannot be proved. Is that not the trouble?

A. Yes. It is very difficult to prove that the man is going to alienate his property although it is very well known in the village that he is going to do so and as a matter of fact he disposes of his property with the result that when the property is attached after alienation, miscellaneous proceedings start and so on.

Sir T. Desikachari.—*Q*. What do you suggest about the provision of the Code? The provision of the Code must be followed before you have attachment before judgment.

A. But the provisions of the Code ought to be interpreted rather liberally and more use of them ought to be made than is generally done. Generally the tendency is not to allow attachment before judgment. In cases of attachment of immovable property there is no hardship.

Dr. Gour.—*Q*. How will it shorten the delay? It will prolong litigation because in every case of attachment before judgment there is likely to be an objection to the attachment, then there will be an enquiry and then at the end there will be an appeal.

A. On the contrary it will cut down litigation. If you give attachment before judgment then alienation is not made, but if alienation is made, the object of the plaintiff's claim is defeated.

Q. I am not talking of the protection of rights to property, but I am dealing with delay. I am speaking as one who wants to accelerate the pace of litigation. Now in that case if the judge resorts to giving or granting attachments or injunctions, then do you not think that there will be objections?

A. Objections will no doubt be raised.

Q. Appeals will be filed and I do not think the defendant will take them lying down?

A. I have seen defendants taking them lying down because there is no defence. It is generally in hopeless cases.

Q. You are speaking of cases where there should have been attachment before judgment. Do you mean to say that attachment applications should be more carefully examined and disposed of?

A. Yes.

Q. That they should not be disposed of in a cavalier fashion?

A. Yes.

Sir T. Desikachari.—*Q*. With regard to execution of decrees, you think that 12 years' rule may be modified? Your personal view is that it can be made six years. What about steps in aid of execution?

A. Well I think there is a suggestion that he can apply at any time. I do not think that is a bad suggestion. He can apply at any time.

Chairman.—Steps in aid means nothing. It does not involve even service on the judgment-debtor.

A. Yes.

Sir T. Desikachari.—*Q*. So you will not be in favour of having any provision like Article 182 of the Limitation Act?

A. A man can put in application at any time when he thinks that he is likely to realise the amount.

Q. What is your suggestion about benami transactions? Will the enactment of a rule that no party to a transaction shall be allowed to plead that it is benami, assist in the realisation of the fruits of a decree speedily and prevent unnecessary claimants? Do you not think that benami transactions should be discouraged because they have the effect of concealing the title? The object of Section 66 is to prevent all transactions which cloud the title. Do you not think that benami transactions should be stopped in every quarter wherever they may be found?

A. I am of opinion that in trying to prevent one kind of fraud, the suggestion proposed will encourage another kind of fraud. People are not so educated as to know what conduct should be followed and what should not be followed.

Chairman.—Most people are educated enough to see that if they buy property they ought to take in their own name. This idea of benami is not of uneducated men only: it is a highly fictitious sort of thing.

A. Even the uneducated resort to it.

Dr. Gour.—*Q*. What is the advantage of a benami transaction?

A. There is no advantage.

Q. No advantage whatsoever?

A. No.

Chairman.—*Q*. Then I should like to know why so many benami transactions are entered into?

Dr. Gour.—The apparent reason is this. Suppose I trade in cotton and the possibility is that after some months I shall go bankrupt. In these months therefore I should keep my profit to my wife and children and should also make all purchases of property in the name of my wife and children.

Mr. Justice Stuart.—Let me give an illustration. An official getting Rs. 100 a month buys a property worth twenty thousand. Now it is difficult to explain how he could have obtained Rs. 20,000 from his salary and therefore he will buy the property in the name of some one else.

Dr. DeSouza.—That is to conceal fraud.

Mr. Mitchell.—*Q*. In your experience, Mr. Sanjana, are not benami transactions largely intended to conceal some form of fraud?

A. Yes, they are.

Dr. Gour.—*Q*. Or to conceal the truth?

A. Yes.

Mr. Mitchell.—*Q.* Would it not be better to put them down altogether?

A. Yes.

Chairman.—*Q.* Do you think that it is possible to make a change in the law to put them down?

A. I cannot say.

Dr. Gour.—*Q.* You know very well that the Civil Procedure Code discourages benami purchases and in consequence of that legislation there are many benami purchasers who have lost their property.

A. Yes.

Written statement of Rai Bahadur D. N. CHAUDHRI, Pleader, Raipur.

1. A. *(i) High Courts.*

(1) There is no Original side in the High Court in the Central Provinces.

(2) First appeals, six months.

(3) Second appeals, nine months.

(4) Miscellaneous appeals, four months.

(ii) District and Sub-Courts.

(1) The Courts of District Judges do not ordinarily try any original suits excepting divorce cases but those of additional District Judges do so; I think the average duration, as stated below, for each class of suits will be reasonably sufficient:—

(*a*) Contested title suits, nine months.

(*b*) Money suits, six months.

(2) Regular appeals, four months.

(3) Civil miscellaneous appeals against orders, three months.

(4) Small causes, four months.

(iii) We have no such courts in Central Provinces.

B. (*i*) Claim proceedings in all courts can be, and as a matter of fact, are disposed of with 3 or 4 months.

C. We have no experience of such courts.

2. So far as my personal experience and information go, I think, the Subordinate Courts in Central Provinces proper (Berar excluded) cannot be charged with unduly delaying proceedings but on the other hand, I believe I would not err on the side of exaggeration if I were to say that no civil courts in any other province in India can claim the honour and credit of such quick disposals.

3. So far as Central Provinces Civil Courts are concerned this question need not arise but I will deal with it below as a general question of principle when I come to details of procedure.

4. It is really very difficult to say whether any change in the present method of recruitment of judicial officers will have the effect of speeding up the proceedings but a change in the method is, nevertheless, desirable with a view, at least, to bring about an improvement in the quality of the work turned out and perhaps with it, a speedier outturn. I would propose as follows:—

(1) *Sub-Judges* (there are no Munsifs in Central Provinces now).—A law-graduate must put in at least 2 years' practice at the Bar and preferably he must be articled to a senior practitioner of at least 10 years' standing before he should be qualified to apply for enrolment in the judicial service.

(2) *District Judges.*—None without at least 10 years' experience on the Bench or at the Bar should be appointed; the present practice of appointing members of the Indian Civil Service to these posts only after a very short training as Sub-Judges should cease; at least one-third of these posts should be thrown open to members of the Bar.

(3) *High Court Judges.*—In the Central Provinces the permanent cadre, as now fixed, consists of only four Judges but it seems a fifth Judge has become indispensable and one gentleman has already been temporarily appointed to this post and very likely he would be made permanent. I would propose that the five posts should be filled in, as follows:—

3 members of the Bar.

1 civilian.

1 member of the Provincial Judicial Service.

5. I have answered above.

6. No.

7. I am sorry I am unable to understand this question and therefore to answer it. To my mind the pure "amount of work done" can never form a sure and safe element in prescribing the standard of efficiency for an officer. He may do a lot but on the whole such bad stuff that frequent remands or reversals may be necessary. I would, on the other hand, give the palm to an officer, who, though somewhat slow, turns out carefully solid and satisfactory work. I am against basing any standard of efficiency simply on the largest amount of disposals.

8. This question is also not quite clear to me. In a district headquarter which is also the seat of the Judge of the Sessions Division, there must necessarily be at least 3 or 4 civil courts of different grades, *viz.*, a District Judge, an Additional District Judge, who is the principal civil court of original jurisdiction and the court of first appeal up to the value of 1,000 or 2,000 rupees and one or two other courts of Sub-Judges of the 1st and 2nd class, even in other district centres of importance though not the seat of the Sessions Judge there must necessarily be two or three civil courts; this cannot certainly be called "concentration of many civil courts" when it is the normal condition and I do not think it can be avoided.

Now, as regards averting the "waiting" for members of the legal profession, it is no doubt true that the request to wait is often made and as often complied with but so far as my experience goes, the courts do not sit idle for that but take up other work from the day's list in which the parties and pleaders are ready; this does not, so far as I know, impede the progress of the work materially and in cases of unreasonable request, if any, the courts are not bound to wait and do not in fact allow the indulgence.

9. It is not necessary in Central Provinces so far as I think.

10. As stated above we have no system of District Munsifs here.

11. As stated above we have no system of District Munsifs here.

12. It is not necessary in Central Provinces; the miscellaneous judicial work done by the District Judge is very small.

13. In Central Provinces. Sub-Judges have been invested with jurisdiction in certificate cases: the Additional District Judges try Probate cases, which are very few, and the Land Acquisition references are tried by District Judges; these cases are very small in number and no change in the present system is called for here.

14. We have had no experience of Panchayat courts which have not been instituted in all places yet though an Act has been passed; I have no objection to invest such courts, when established, with power to try petty local money suits.

15. I would not restrict the scope of Schedule II of the Provincial Small Cause Courts Act and think that all conceivable exclusion has been incorporated in it; it is not desirable to have any of these excluded suits tried in

a summary manner; I am of opinion that suits on simple mortgages and those relating to partnership irrespective of value often involve complicated questions which should not be tried summarily.

16. I think the summary procedure contemplated by section 128 (2) (*f*), Civil Procedure Code, should not be introduced in the lower courts of this province. It is meant primarily for Presidency towns or big centres of commerce where dealings are made between intelligent business men with full formalities.

17. I would not create another class of civil courts, *viz.*, Sub-Registrars and do not think that will make for speedy or less costly disposal at all.

18. I do not think that the right of appeal has been given in too many cases at present; I would not curtail it at all.

19. There is no Letters Patent appeal in Central Provinces and I do not propose to answer this question.

20. I do not think very many frivolous second appeals are filed in the High Court of this province; I would not curtail this right at all.

21. No; that will result in practically shutting out poor litigants.

22. I think this power is very rigidly exercised in the Central Provinces High Court.

23. I do not think the right to apply for revision is much abused though no doubt there may be instances where frivolous applications are made but I would not curtail the right; the remedy is in the hands of the High Court itself which has the power of summary dismissal in such cases; I am not in favour of the view that the decretal amount should be deposited beforehand in applications for revision against judgments of Provincial Small Cause Courts; revision against interlocutory orders is sometimes very necessary as otherwise by the time the decree is passed one party may obtain undue and perhaps irreparable advantage over the other.

24 and 25. (1) The service of summons on the defendant is the initial huge task which the plaintiff has to apply himself to and if the defendant is a minor the task becomes very difficult indeed and out of the total duration of the suit, more than half and sometimes three-fourths of it is taken up in this preliminary chase; I must say, however, that the dishonest tricks which are played invariably in Bengal, Bihar, and United Provinces by the process service department are much less in Central Provinces. Here the normal state of things is a good, correct and prompt service by the unaided efforts of the process-server even in the remotest parts of the district and it is only when there is attempt at evasion by the defendant himself that some delay and trouble are caused but I am prepared to absolve generally the serving department from blame for this and would fasten the guilt primarily on the elusive defendant; there is difficulty of service by post in the interior of many districts in these provinces and the substitution of the Post Office agency will not meet the requirements of the case but a provision for service by post within the area of jurisdiction may be introduced in the Code; of course, where two summonses are returned by the process-server with the report that the defendant is avoiding service, a prompt order of substituted service often settles the matter.

Now as regards minors the trouble is indeed very great and I am afraid a too cautious and withal complicated procedure laid down in the Judicial Commissioner's circulars of this province makes the matter still worse. The present procedure is as follows:—

(1) the plaintiff sets down somebody, often times the nearest relative with whom the monor lives, as his guardian *ad litem* and he swears an affidavit to that effect;

(2) the court orders a notice to issue to the proposed guardian and also the minor;

(3) the notice is often returned after service on the guardian but not on the minor;

(4) notice after notice has to be sent but a minor can never be served and ultimately the plaintiff or his agent secures a false report of service on the minor but the guardian is *non est;*

(5) the court calls upon the plaintiff after perhaps six months have been lost by this wild goose chase, to nominate another guardian and this is done, and sometimes the same game is repeated and ultimately when both parties and the court become tired and exhausted the suit is allowed to continue with the court officer being appointed guardian *ad litem* and the plaintiff has to pay for the appointment of a pleader for his own adversary.

(2) I believe there is much scope for improvement in the present complicated procedure relating to service on minors and his relatives take advantage of the same and cause harassment and delay. I think the attempt to serve the defendant minor personally is a farce. Who is to accept service for him? Evidently the same relative who has been playing hide and seek. I am led to think that the report of personal service on the minor is in majority of cases false and manufactured with a view to get rid of the trouble. Is it at all possible to serve a minor who is an infant in arms, but even in his case the present practice insists on a personal service on him as well.

(3) I would, therefore, propose the following change in the practice:—

(*a*) I would do away with the farce of serving the minor,

(*b*) when the nominated natural guardian, such as the father, mother or the joint brother or uncle does not appear or refuses to act for the minor in whom he or she is naturally interested, the court may at once presume that the refusal is contumacious and the proposed guardian should be called upon to show sufficient cause for his refusal and on his failing to show cause the court may impose on him a fine not exceeding, say, 50 rupees and straightaway appoint a pleader of the court to act as guardian and order the plaintiff to pay him a reasonable fee,

(*c*) if the minor has no nearest natural relative, then after the service on the guardian proposed by the plaintiff and on his non-appearance or refusal, the court should proceed at once to appoint a pleader as guardian as stated above. I am confident this will produce a salutary effect on the recalcitrant natural guardians and contribute towards the speedy disposal of suits.

26. The English writ and statement of claim are quite unknown in this country and I would not insist on this form.

The forms of plaints given in the Civil Procedure Code are generally adhered to.

27. No, they are fully conformed to.

28. I have answered above; there is no facility of prompt service through the agency of the post office in the interior of any district in Central Provinces.

As a matter of fact the processes of all courts and public offices are served in the villages by process peons with the aid of the village officials, but they should not be solely trusted with service, the presence of a public servant such as the process-server, with the aid of the village official will ensure service.

29. This is possible only in the case of firms and trading houses and only in big cities; it will not work at all in the mofussil.

30. Yes, there is no harm in that, but the pleader can hardly assist the process-server much.

31. The court should ask each party to submit a draft and then after consultation with the pleaders of the parties the issues should be framed.

32. Examination of parties is not much neglected but the provisions about discovery and admission of documents are seldom observed; I think it

is due to the pleaders and the courts not understanding the value of these provisions and their longstanding disuse; the remedy that I can suggest is to mulct the defaulting party in costs.

33. I would be no party to the giving of power to the courts to examine parties at the first hearing on the merits of the whole case; though this may shorten evidence to some extent but may be the fruitful source of suborning and bribing witnesses afterwards. I will give an instance; supposing the plaintiff says in his statement that such and such persons were present at the time of the contract; his statement may be perfectly true but the defendant may take advantage of the information and try to suborn the witnesses and when the trial afterwards begins none or some of the witnesses may not support the plaintiff. At present neither party is supposed to know beforehand what the witnesses of his adversary are going to say and that is some safeguard against subornation. I am, therefore, against the suggestion that parties should be examined fully on the merits of the whole case, before the trial begins and moreover the institution of examination of the party as his own witness is a plant of very recent growth in Central Provinces where this procedure was seldom followed and I still come across judgments in which I find that the courts are prone to attach no importance to the depositions of the parties, which are taken for granted as unreliable and are absolutely ignored.

I am aware of the practice in Bengal of examining parties at great length by the court at the first hearing but there the parties are very intelligent.

34. Yes, this is generally observed. I think the rule should not be departed from except for special reasons.

35. Yes, in not an inconsiderable number of cases, I think the court can saddle the party calling such worthless witnesses with the costs thereof irrespective of the result of the case.

I cannot suggest any means by which the courts may control the citing of witnesses by parties.

36. Yes, I agree.

37. This is not possible and should never be attempted; the courts have ample powers to disallow irrelevant questions but no time limits ought to be fixed.

38. I would not extend the provisions of Order 37 to any other classes of suits; even as they are, they have seldom been sought for by the parties in the mofussil courts.

39. I think the principle of representation is capable of wider application and may be insisted on in the following classes of suits:—

(1) Suits between the landlord and tenants of the same village regarding all communal rights, claims of easement, rates of rent, pasture land, right of irrigation, rights to timber growing on tenancy lands, etc.

(2) Suits between sons and alienees of a Hindu father, or between coparceners and the manager of a joint Hindu family or between reversioners and the Hindu widow or her alienees.

(3) Suits regarding places of public worship, public meeting, public way. In all the above description of suits though they partake of the nature of representative suits but the point is not quite clear and there are conflicting decisions of High Courts with regard to some of them.

As soon as a suit of the above description is instituted the court should insist on the plaintiff and the defendant when he appears, to name all the members of the community, the tenants of the village and members of the family and fraternity in the neighbourhood so far as possible and then issue a proclamation to be made in the neighbouring area inviting all interested persons to come and join with the parties or urge any objections to the maintenance of the suit between the parties named or any other; the courts should stay the suit for 3 months and then after deciding all the objections proceed to trial.

In case of Mitakshara families, other co-owners and Malabar tarward, I would proceed in the above way by issuing a proclamation inviting all interested to join or object and then staying the suit for a short period before proceeding to trial.

40. No, I would not throw the duty on the legal representative even if he is aware of the proceedings. It is the plaintiff's duty to bring him on the record as he has filed his *lis* in court; others are not bound to come unless the plaintiff brings them in the proper way.

41. I have dwelt on this subject at length in my reply to Question No. 25.

As regards the suggestion that the plaintiff in his first petition should name all the possible guardians so that the court may select one out of them, I quite approve of it.

42. There is no complaint, so far as I am aware, about unnecessary *ex parte* injunctions and orders in this province; section 95 provides sufficient check.

43. I do not think that the judgments of the courts in Central Provinces are, as a rule, unduly long though there may be a few Judges who are in love with that practice but it is quite negligible and does not call for any drastic step.

44. Yes, very often.

45. Yes, the Judges fix the dates.

46. Pleaders are generally consulted.

47. Yes, much time is taken up in the commissions and particularly when they are sent to Indian States; I do not see any way of controlling their length when the witnesses are out of the court's jurisdiction; I would not add to the powers of the commissioners; I would not insist on written interrogatories as a rule.

48. As I have stated there is not much complaint about unnecessary adjournments in the courts here; affidavits are not filed as a rule, the costs awarded are sufficient.

49. As a rule all suits are not tried continuously day by day but what happens is that the courts generally examine all the witnesses present of the party leading evidence at a hearing even if that takes up more than one day and then fix another date; I think this contributes more towards a speedy disposal than to wait till the presence of all the witnesses of the parties is secured.

50. Yes.

51. There are no suits of the nature of commercial suits in Central Provinces.

52. I cannot suggest any amendment.

53. I would not extend the provisions of section 21 to applications for execution.

54. I have no objection; I think these powers should be given to courts to which the decree has been transferred for execution.

55. I am in favour of the modification.

56. (*a*) I am in favour of the alteration proposed;

(*b*) I am not in favour of the curtailment of the period of limitation;

(*c*) This may be done. I am not in favour of the suggestion that the decreeholder may be allowed to execute the decree at any time convenient to him within the lifetime of the decree; this will unnecessarily swell the interest on the decree; the sooner the execution is taken out the better both for decreeholder and the judgment-debtor.

57. There seems to be no objection to the proposed alteration.

58. No, I would not restrict the pleas of payment out of court in the way proposed.

59. This may be allowed; the second proviso to Rule 16, Order 21, seems to be unnecessary.

60. There is; a judgment-debtor should not be harassed unnecessarily and the discretion of the court should not be taken away.

61. (*a*) No special notice seems to be necessary where a notice of the execution petition is given but it seems to me that the notice provided for is not a special notice but one of the execution itself.

(*b*) There is; the rule is necessary.

62. Yes, it will work hardship; the court is to proceed only upon sufficient cause being shown and I would not restrict it.

63. There seems to be no necessity for special notices at each stage. Permission to bid is always given *ex parte*.

64. Yes. There is reason enough against simultaneous issue of attachment and sale proclamation. Objections to attachment would otherwise be hampered in many cases. No notice of execution petition should, as a rule, be served on pleaders in the suit as their engagement generally ceases after the decree.

65. No, the village officials will seldom assist in the apprehension of a co-villager.

66. I would suggest the following:—

(1) In all mortgages the right of sale should be given to the mortgagee, if he so chooses;

(2) the right of a person joined as a defendant claiming a title independent of the mortgage and adverse to that of the mortgagor may also be adjudicated instead of leaving it open for a separate suit;

(3) it is absolutely necessary that all prior and subsequent encumbrancers should be impleaded and all their rights may be adjusted once for all;

(4) I think the filing of an encumbrance certificate from the Registration Office showing existing encumbrances up to the date of the suit will be a step in the right direction;

(5) sometimes much time is given but when the mortgagor shows his *bonâ fides* by making some payments from time to time and in other ways, the court's discretion to grant time should not be taken away because it is often the case that the value of the property far exceeds the amount of the mortgage. In decrees for sale there is no provision to grant time but, I think, it should be made as in the case of foreclosure decrees on the above conditions.

I think in simple mortgages also a preliminary decree should be made to allow the judgment-debtor an opportunity to raise money to save his property from sale; this right is given to all judgment-debtors even in case of money decrees (*vide* Order 21, Rule 83).

It is not necessary to record a separate personal decree; it may be provided for in anticipation in the original decree and the present clause No. 3 in the form No. 4, Appendix D, Civil Procedure Code, may be amended.

67. My answer to all the questions in the clause is in the negative. It does not appear to me that the stay orders are so frequent that any power should be given to the appellate courts to award compensation.

68. No; I am not in favour of any provision in any proceeding taken against a decree or execution for a condition precedent to deposit the decretal amount, which will, in my opinion, deprive the aggrieved in many cases of having recourse to the remedy.

69. Yes, very much; it hampers as the result of the very great facility afforded to dishonest judgment-debtors to secure the adjudication order; the number of insolvency cases is increasing on account of the facility of securing an adjudication order; if the law is made more stringent, *e.g.*, if a full enquiry is made into the judgment-debtor's *mala fides* and his right to make the application is somewhat restricted there will be no necessity for a devolution but the cases will automatically decrease in number. I think this jurisdiction should always be vested in an experienced officer.

70. The present provision for arrest and attachment before judgment is enough.

71. I can only suggest the following:—

(*a*) regarding admission of secondary evidence the law may be somewhat relaxed, *e.g.*, when the party makes an affidavit as to the loss of a registered document, the certified copy may be forthwith admitted without calling upon him to give evidence of loss;

(*b*) as regards proving account books, I think proof of each item of dealing should not be insisted on but if the party swears as to the regularity of the books and their correctness the whole of them may be accepted unless there is dispute about any particular items.

72. Yes, it is necessary but I would widen the meaning of attestation by including in it admission of execution before a witness.

No, I would not clothe a mortgage deed with such a presumption and change the law of burden of proof.

73. This is, I think, the practice at present; if the parties consent secondary evidence is always admitted without further proof and even uncertified copies are admitted.

74. I cannot think of making the law of limitation being made more stringent than it is at present.

75. I cannot suggest any.

76. No.

77. As above.

78. I do not think so; the doctrine of "part performance," whatever it may mean, does not create a title by itself but only leads the way to its acquisition; I do not think the creation of a mere charge by payment of a part or whole of the consideration in pursuance of an unregistered agreement, which does not *per se* create a title, should be made dependent on a registered document.

79. No; the discharge of the obligation by the return of the document with an endorsement of payment made by the obligee should be enough and no registration should be insisted on.

80. No, I would only limit the general proposition by insisting on a thumb-impression in the case of illiterate persons.

81. I am personally against *benami* but it cannot be rooted out of the country so speedily; as a matter of fact we come across many cases of *bonâ fide benami*, if I may use such an expression; and it would be a great hardship if the plea is disallowed; it may speed up the trial in a few cases but will perpetrate an injustice in the present state of the society.

82. No, I would not recommend a further increase of court-fees in any case; the recent amendment in the law regarding grant of compensation in such cases is enough.

83. I think the rule of attestation may be retained in cases of mortgage and lease and extended to sales as well but the definition of attestation may be widened as suggested above; a law has already been passed to this effect and it may be extended to all provinces.

84. This is again another long standing habit of the people and cannot be done away with. The Privy Council and all the High Courts in India are

of opinion that to help poor litigants to get possession of their property from rapacious and stronger relatives is not an act against public morals. I would not stop it by legislation but the courts have ample power to afford remedies in unconscionable and too hard bargains.

85. The present powers of reference to arbitration may be applied in all classes of cases and no further power seems to be necessary.

86. The multiplication of law reports is a necessary evil. I would not purchase speedy trials by curtailing law publications or reports but an effort at co-ordination of the many reports issuing from all quarters may be made.

87. I would draw a distinction between "speedy justice," and "speedy trials," the one does not necessarily include the other and sometimes what may be "speedy trials" may be miscalled "speedy justice." The term often imports justice administered in a summary manner. I am against the introduction and development of a system of this type of justice, however much the trials may be delayed.

I do not think there is any scope for further codification of any substantive law in India, except perhaps some branches of the Hindu and Muhammadan Law.

Rai Bahadur D. N. CHAUDHRI, Pleader, Raipur, called and examined on Saturday, the 19th July 1924.

Chairman.—You are a pleader at Raipur, Rai Bahadur?

A. Yes.

Q. I gather you agree that as regards delays in this province you have not got much to complain?

A. Not at all.

Q. I understand that even your Additional District Judges' Courts or first class Subordinate Judges' Courts are not so congested as to make any changes necessary?

A. Yes.

Q. Then I see that you have put down as reasonable time for the disposal of first appeals, six months, and for second appeals, nine months?

A. Four months for first appeals.

Q. But I do not quite follow why second appeals should take longer time than first appeals?

A. Because there are so many, and dates are fixed at intervals of nine months or a year and they come from all parts of the province.

Q. First appeals also come from all parts of the district?

A. Yes, they do come, but they are generally fixed within a very short interval in the Judicial Commissioner's Court.

Q. There is no question of time which is likely to be taken, but the question is with regard to the right and reasonable time that should be taken—never mind, whether it now takes so much time or not. You will agree with me that first appeals would require more time than second appeals because you have got to deal with the evidence and do many other things. Second appeals ought to be disposed of in less time.

Dr. DeSouza.—As a matter of fact I find the duration of first appeals in Nagpur is 418 days while duration of second appeals is 343 days.

Chairman.—There is no question of duration, but the question is what should be the right and reasonable time.

A. When I have used the word "first appeal" I have meant bench appeals. Bench appeals here are fixed generally within two or three months and they are generally disposed of on the dates fixed for them. Of course there is a slip of the pen.

Q. Then you think that the time for regular appeals in district courts will be four months? I quite agree with you that it is a reasonable time.

A. Yes.

Q. Then you think that the reasonable time for contested title suits should be nine months?

A. Yes.

Q. As regards the method of recruitment of judicial officers you think that Subordinate Judges should have two years' practice at the Bar after taking their law degrees and they should preferably be attached to senior practitioners during these two years?

A. Yes.

Q. As regards District Judges you think that there should be ten years' experience either on the bench or at the Bar before a man is taken as a District Judge?

A. Yes.

Q. And you would like that one-third of the District Judges' posts should be open to the members of the Bar? At present have you any District Judge who has been directly appointed?

A. No.

Q. Other provinces have got one such appointment. Do you not have one?

A. No.

Q. In past years you used to have?

A. There was only one instance.

Q. Then you say that in the Judicial Commissioner's Court, there should be five Judges and three of them should be appointed from the members of the Bar, one from the Provincial Judicial Service and one from the Civil Service?

A. Yes, but here I may add that with regard to the selection of Judges in our High Court, there is almost consensus of opinion that selections are not made properly.

Q. Do you mean to say that more care should be taken in the selection of Judges of the High Court?

A. Too much attention should not be paid to the amount of work, but to the quality of work.

Q. I take it that in this province you have a much better system of inspection of courts than in any other province?

A. I cannot say anything with regard to other provinces, but the District Judges here make thorough inspections.

Q. If you have got a very good system of inspections, that is the only way, I think, by which you can determine the quality of the work?

A. Yes.

Q. And further there is nothing in this province to indicate that this question of quality is being overlooked, but on the contrary the inspection system seems to show that the authorities have that question very well in mind.

A. But my point is that if you pay more attention to quantity, then it is natural that you do not pay so much attention to quality.

Q. You must not make the standard of quantity too high, but do you not think that he is a good Judge who gets through as much work as anybody else?

A. But sometimes a good Judge with a view to show good outturn of the work sacrifices quality to quantity.

Q. As a general rule, do you not find that he is frequently a quick worker?

A. Not necessarily. I think that if an inspecting officer finds that a Judge has turned out more work and speedy work, he perhaps gives him all the credit rather than if he were to turn out a smaller amount of work but work of a better quality.

Q. Well, what is the best test of determining the quality of work for all practical purposes?

A. It is very difficult to determine.

Q. I think the only chance you get for determining the quality of work is when you see something of his work, when you are sitting on appeal, because then you go through the records and can at once judge what is the quality of the work.

A. But sometimes it so happens that the Judge wants to dispose of cases on technical points with a view to show a speedier outturn.

Q. If the Judge disposes of a case wrongly on a technical point and if it comes back again after appeal, then, of course, it is bad work.

A. But there is the risk of all cases not being reversed.

Q. You say that it is no loss of time in waiting for the legal practitioners as the courts can take up other cases?

A. Yes.

Q. As regards the question of work done by the District Judges being entrusted to the Subordinate Judges is there anything that you would approve of? You do not want to change the system of land acquisition cases or probate cases not because you think the Subordinate Judges incompetent for these cases but because you do not see that there is any call for making this change.

A. Yes.

Q. You do not want to entrust the Small Cause Courts with classes of cases which are at present excluded?

A. Yes.

Q. Take a case which is entirely about money or movables. If it is a question of cancellation of document or of specific performance then it could not be tried by a Small Cause Court, but have you gone through the schedule of the Presidency Town or Provincial Acts with a view to consider in detail whether there are any changes which could be made?

A. I have gone through them rather hurriedly.

Q. Let us take one sort of thing. We have a suit for specific performance in which the contract is to sell a small movable of the value of Rs. 20. That case you would probably leave for the Small Cause Court?

A. If it is a suit of that kind I would not object.

Q. Do you think that a further enlargement of the clause would probably lead to more congestion?

A. Yes, but it is, of course, not bad to include the cases like the illustration you have given in the schedule.

Mr. Justice Stuart.—*Q*. I do not think that an ordinary case of cutting down a tree should be kept outside the Small Cause Court. It is a very common class of case—at least according to my experience—in other provinces and I do not know whether it is so here or not. There is a tree in the village and one man cuts it down and another man brings a suit against that man for Rs. 10. Now this kind of suit cannot be tried by a Small Cause Court. Do you think there is any advantage in that? It is a very petty case.

A. That is a question of title.

Q. It has nothing to do with a question of title. It is for damages.

A. I do not think that such a case would ever arise in the Central Provinces.

Mr. Mitchell.—What Mr. Choudhri means is that in the Central Provinces trees go with the land and the cutting down of a tree would lead to the question of title.

Dr. Gour.—*Q.* You have spoken about the recruitment of the highest judiciary. What do you suggest?

A. I have suggested that three should be members of the Bar, one should be a Civilian of high standing and the fifth should be a member of the Subordinate Judicial Service.

Q. Now, are the cases of specific performance—decisions on contract and injunctions—too numerous? I am talking of those relating to movable property.

A. Very few.

Q. Do you not think that there will be difficulty in specifying the class of cases, for instance, injunctions against actors and singers. They are cases of great complexity?

A. Some of them are.

Q. Consequently if you are to include these rescissions of contract and injunctions, you will have to categorise them?

A. The question was put to me by the President. Supposing the property is only worth rupees twenty—a movable property—and with regard to that a man was to bring a suit. In that case if you were to fix a money limit of the suit then I would not object.

Q. The money limit would not take away the complexity of the case; take for instance an injunction upon a particular actor or a singer, value of which might be five rupees.

A. That would not be for movable property.

Sir T. Desikachari.—*Q.* All such cases, rescission of contract, injunction, or claim cases under section 232, if they relate to movable property will, without regard to value, come in the Small Cause Court jurisdiction?

A. Yes.

Dr. Gour.—*Q.* You say that in the Central Provinces there are not many cases of this character. Supposing a change were made that these cases be included within the Small Cause Court jurisdiction, would you advocate that? Cases are very few and there will be no saving of time.

A. I think so.

Q. It would not affect, therefore, the question of delay in the disposal of suits in the Central Provinces?

A. It would not.

Chairman.—*Q.* Now I see you say that as regards these questions of natural guardian, if the father, mother or the joint brother or uncle does not appear, or refuses to act for the minor, the court may at once presume that the refusal is contumacious, and the proposed guardian should be called upon to show sufficient cause for his refusal and on his failing to show cause the court may impose on him a fine not exceeding, say, 50 rupees and straightaway appoint a pleader of the court to act as guardian. What is the object in imposing a fine?

A. To make the natural guardian to come forward as a guardian.

Q. But an unwilling guardian is not likely to serve the interests of the ward?

A. The father, mother, brother or uncle would not be unwilling but they do not appear and they are always behind the scene.

Q. You will regard that a duty to the court and that the court, on principle, should appoint a father or mother as a guardian? You will enforce it by a fine with a view to ensure that they have no interest in refusing to act?

A. As a matter of fact they have no interest in refusing to act unless their interests are adverse.

Q. Of course in that case the court cannot appoint them as guardians?

A. Yes, but the natural guardians have no interests adverse to the minor.

Q. You say that the post offices cannot effect service in most of the districts here, and it is the elusive defendant who evades service and that with the aid of the village official the process-server would effect service better than in any other way.

A. Yes.

Dr. Gour.—*Q.* You have to pay the village official?

A. In that case you will have to pay him.

Q. Would not that increase the fee?

A. It would.

Mr. Mitchell.—Would you require the village official to serve the processes himself?

A. No.

Dr. DeSouza.—He should be only called to identify the party.

A. I would simply say that the processes should be served through the assistance of the village official.

Q. He will point out the man?

A. Yes. The process-server goes to the village official even now and he points out the man to him.

Chairman.—I see you say that you are not in favour of the idea that the parties should be examined fully on the whole case before the trial begins?

A. Yes.

Q. You prefer the present method?

A. The present method, of course, supplemented by the present practice also. The parties are examined at great length without being subjected to any cross-examination by the other party. The Court examines them at length and tries to elucidate all points in controversy. That, I think, is quite satisfactory.

Q. Now, I see in answer to Question 39, you suggest that the principle of representation might be applied to certain class of suits—suits between landlord and tenants of the same village regarding all communal rights; suits between sons and alienees of a Hindu father, or between co-partners and the manager of a joint Hindu family or between reversioners and suits regarding places of public worship, public meeting and public way. You say that in cases of this nature there are conflicting decisions and you would like to have the law made clear so that in this class of cases you may get certain defendants and get an order for making them represent the interests of the whole of them.

A. Yes.

Q. At present you can bring a suit during the lifetime of a widow to declare that an alienation should not take effect beyond her life and to restrain her from committing acts of waste. Do you mean that in that class of cases you would allow a Hindu widow to bring a suit for declaration that a certain alienation is valid and binding and produce the reversioners who are the apparent reversioners at that time and get an order that it would bind the ultimate reversioner whoever they might turn out to be?

A. I think the present law is like that. At least the Madras High Court has taken that view.

Q. There are some decisions of the Privy Council that such a suit as that is in the nature of a representative suit.

A. I don't think the decision in such a suit would bind the ultimate reversioner if he gets into possession.

Q. Suppose a suit is not brought during the lifetime of a widow to set aside a certain alienation made by her. More than 12 years elapse after the alienation. Then after 12 years the particular man who is the heir at that time wants to start and challenge the alienation, no suit having been brought one way or the other in the meantime. Would you be in favour of limiting the law of limitation as to the time within which such a suit could be brought, say, so many years after the alienation?

A. Now the law is he can bring it within 12 years after he becomes entitled to the reversion.

Q. It may be even 60 years after the alienation. If no one of the families from whom the ultimate reversioner is likely to come during the 12 years after alienation takes any steps at all to bring a declaratory suit or anything of that sort, do you think it would be possible to prevent an ultimate reversioner years afterwards raising the question?

A. I do not think that it should be prevented.

Q. You think that even 60 years afterwards the ultimate reversioner ought to be able to challenge the alienation?

A. If nobody does it for so many years he is not bound.

Q. Would it not be fair to make him be bound?

Dr. Gour.—*Q.* The case contemplated by the Chairman is this. If an alienation is made and if it is challenged after 60 years then all the evidence is lost and the burden is on the alienee to establish the validity of the transaction. He too might have gone and it may be his grandchildren. Don't you think it is just and fair that every opportunity should be given only for 12 years from the date of the known alienation to challenge the alienation—whether he is the next or presumptive in the line of reversioners it does not matter— and then when the reversioner files the suit he should not be at liberty to challenge the alienation?

A. The present reversioner might collude with the widow.

Q. Visualise cases of that character. Take, for instance, the following case. 60 years ago an alienation was made. You have the alienee's representative—possibly his grandson or great grandson or he may be a perfect stranger on the one side and the next reversioner on the other side. The next reversioner presumably knows something about it—not very much perhaps. But the alienee's transferee who is a perfect stranger—it may be yourself—knows nothing at all about it. Now is it not right that when a suit is brought after certain lapse of time, the law should presume that what was done was right? In English Law, for instance, there is a well-known case that if for 20 years a certain transaction is not challenged, then it must be presumed to have been right.

A. In that case the whole of the Hindu Law will have to be changed.

Q. This is no part of Hindu Law.

A. It comes in incidentally, because no reversioner represents the others.

Q. It is Article 141. It is Statute Law.

A. What I mean to say is that the present reversioners did not take any action and ultimately after 50 years the widow dies leaving the then existing reversioner. No action was taken by the reversioners who were living during the lifetime of the widow and they did not represent the existing reversioner. He has got his own right to look after.

Q. It is perfectly right.

A. Why then should he be debarred?

Q. The Privy Council has settled that nobody in the line of reversioners can sue.

A. That would be during the lifetime of the widow.

Q. I am dealing with that point. The next reversioner was in the line of heirs. He had, therefore, a right to sue; but he had his father or grandfather. They have not sued.

A.—I understand that. But their failure will not bind the ultimate reversioner.

Q. Do you not see the gross injustice to a *boná fide* transferee for value without notice who has to bear the burnt of establishing the validity of a transaction made in favour of, say, half a dozen of his predecessors 60 years ago?

A. I do not like that. There are already safeguards provided for it.

Q. I want you to give me any reason for that.

A. I would not like to bind the ultimate reversioner who would like to challenge the alienation, though it may be after 50 years.

Q. I want you to justify your statement.

A. I do not wish to bind him.

Sir T. Desikachari.—Primâ facie an alienation by a widow need not be justified by any party for any period beyond her lifetime. A person dealing with a widow knows her limited rights. Why should he be protected?

A. Yes. That is my view.

Chairman.—Do you know anything about the position of the customary law in the Punjab?

A. No.

Q. Well, in the Punjab they apply a similar principle to alienation and adoption. There, practically according to the customary law of the Punjab, nobody has got the right of defeating his own sons by alienating land. There the period for bringing a suit is six years.

A. They reduced the period to six years, but the proprietor is disqualified from alienation and that is why the sons can come in

Dr. Gour.—By a ruling of the Privy Council the widow is the owner and proprietor of the land though her power of alienation is fettered by some rules.

A. There the father is disqualified from alienation to the detriment of his sons' interests, but here the widow is not disqualified. At the same time her rights are subject to certain rules of reversion.

Written statement of Mr. S. M. CHITNAVIS, I.S.O., Nagpur.

1. A. *(i) High Courts.*

Original suits.—No original suits are tried in the court of the Judicial Commissioner in this Province.

First appeals.—Between 6 and 12 months. Care should be taken that judgment is delivered within a month from the date of hearing of appeal. The period intervening institution of appeal and delivery of judgment should not exceed one year.

Second appeals.—Same remarks as above. The Judges ought to sit regularly from 11 A.M. to 5 P.M. and if this were done the duration mentioned above would be found to be adequate.

Miscellaneous appeals.—Six months.

(ii) District and Sub-Courts.

Original suits.

(a) Title.

The duration in these suits depends upon the nature of the suit, the nature of defence, residence and number of defendants and witnesses. A reasonable period for the disposal of these suits may be assumed as one year.

Uncontested suits may be disposed of in 6 months.

(*b*) Money.

Contested suits	One year.
Uncontested suits	Four months.
Regular appeals	Four months.
Miscellaneous appeals	Two months.
Small Causes	Three months.

B. (*i*) Claim proceedings in Execution, six months.

2. It does. The main causes of delays appear to be the unsatisfactory service of processes. It was also due to inattention on the part of Judges occasionally in arranging their cause list, bad drawing up of pleadings, procedure in the appointment of guardians, frequent adjournment of cases, want of rectitude among the clerical and process-serving staff, procrastination caused by parties and their legal advisers. In some cases little or no efforts are made to check the advancing of frivolous pleas and to dispose them of promptly.

3. More effective measures should be adopted to ensure the service of processes within a reasonable period, even by repetition of processes. Strict supervision should be exercised over the process-serving staff.

6. It does. No judge should be transferred except for good reasons, before he has put in three years in one place.

8. Probably it is.

13. This is being done in this province.

14. There are no village courts and Panchayets in this province. If any are established hereafter, I would not give them "exclusive" jurisdiction.

17. I am opposed to this being done. The Sub-Registrars in the Province are generally not qualified to try civil suits, nor will they have time to take up this work. The staff is being reduced and registration offices which do not show average full day's work are being closed.

18. I do not think this is the case. I am not in favour of curtailing the existing right of appeal.

20. I believe they are. In suits of the nature tried by Small Cause Court, I would not allow second appeals when the value of the claim is Rs. 1,000 or under.

21. This should not be laid down as an absolute rule. Discretion may be allowed to the judges of the Judicial Commissioner's Court.

25. The application of the procedure under section 106 of the Transfer of Property Act to civil suits seems undesirable. It is liable to be abused.

27. These are, I believe, being properly enforced.

28. The agency of post offices for the service of processes would not bring about a result without an enormous amount of delay. As to the employment of village officials in the service of processes there is danger in the system.

29. This may be tried.

30. This will not be practicable as regards pleaders.

31. There are already circular orders on this subject.

33. It would. I agree to the suggestion.

34. I believe not.

35. It is. Presiding officers should award adequate costs against the party wasting time in needless cross-examination, or calling witnesses who ultimately prove nothing.

37. I do not agree.

38. I would not do this.

40. This is worth trying, a time limit being fixed.

41. This does occur frequently. If the *defacto* guardian refuses to act *ex parte* proceedings should be undertaken. The suggestion made herein may be adopted.

42. This is rarely done.

43. There is no complaint on this score.

44. Generally they are not.

45. They are.

46. They are.

47. I do not think they are. Interrogatories should be put in by both parties and questions outside these should be permitted only in special instances.

48. The insistence on written applications would speed up work.

49. This procedure has been introduced in this province.

54. This may be done.

55. As above.

56. (*a*) The present period should not be curtailed.

(*b*) I do not agree.

I agree as regards the last suggestion.

57. This may be done.

58. This is objectionable and will lead to injustice and hardship.

59. This may be done.

60. May be deleted.

62. The discretion allowed at present to Courts seems to be sufficient.

63. The procedure suggested may be adopted.

64. I agree as to (1) and (2) but not as regards (3) and (4).

65. I do not approve.

67. There is no complaint about this.

68. I do not agree.

69. It does. The former law was better and should be restored.

72. I agree as to the latter query.

74. The limitation for redemption of a mortgage should be reduced from 60 to 12 years.

76. I agree.

79. This would obviate fraud.

80. This does not appear to be practical.

82. Court fees have already been enhanced in this province and this is operating as a hardship. I must strongly oppose any more enhancement.

83. Attestation in the case of mortgage deeds should be retained.

86. It has.

Mr. S. M. CHITNAVIS, I.S.O., Nagpur, called and examined on Monday, the 21st July 1924.

Mr. Justice Stuart.—*Q.* Mr. Chitnavis, you have had a very long experience in service?

A. Yes, I have 30 years' experience. I retired in 1916 having officiated as Commissioner for about 18 months. At the time of retirement, I was Deputy Commissioner.

Q. You know the Central Provinces very well?

A. Yes, I belong to the Central Provinces and I hold a big landed estate in the Nagpur division. I have worked in the Agricultural, Veterinary, Cooperative, Excise and Industrial Departments.

Q. What is your opinion about the judiciary?.

A. I think they are much better than they used to be when I was doing civil work as District Judge. They are better now.

Q. Were you also a district judge?

A., In the old times deputy commissioners had to do civil work as well.

Q. What is the general opinion about their integrity?

A. Their integrity is not questioned as a rule, but there are always some black sheep in the flock.

Q. At any rate you think that it is a very small proportion?

A. Yes.

Q. What is your opinion about the integrity of executive officers?

A. They are too, I think, much better now than they were before.

Dr. DeSouza.—*Q*. I think improvement in their integrity has taken place since graduates have been entertained in service?

A. Yes.

Q. Formerly clerks were given these appointments but now direct appointments are made and all the candidates are graduates and their integrity has improved?

A. Yes.

Q. I think the same was the case in other provinces, *i.e.*, Punjab, Burma, United Provinces, etc.

A. Yes.

Q. There used to be some trouble, but now there is none.

A. Yes.

Mr. Justice Stuart.—*Q*. Now with regard to the figures of duration given at the beginning of your note, do you put down these figures as the best figures?

A. These are the figures which show the average that ought to be taken in the disposal of cases, but sometimes there may be some cases in which more time may be taken up in their disposal.

Q. Do you not think that we can reduce the figure of uncontested suits considerably? You have put down six months for the disposal of uncontested suits.

A. It depends upon the file of the subordinate judge.

Q. But if you start with a clean file and if you make better arrangements for their disposal, there is no reason why an uncontested suit should not be decided on the very first day that the parties are brought before the court?

A. But the difficulty is with regard to bringing the parties before the courts.

Dr. Gour.—*Q*. Do you think that the files of subordinate judges are very congested? Are they overloaded with work?

A. I cannot tell you because I have not seen their files.

Mr. Justice Stuart.—*Q*. You make a very strong point of the necessity of effective supervision over the process-serving establishment, but you are not very much enamoured with the idea that much assistance may be had from the village officials?

A. Mukadam's gumashtas are always illiterate people and much assistance cannot be expected from them. I do not think they will be able to give any help.

Q. Can you not utilise the services of patwaris?

A. The patwari has got a large number of villages under him and it depends upon the area of cultivated land in each circle. His services cannot be of much use.

Dr. Gour.—*Q*. Just as 'patels' are educated people, if you have a system like that do you not think that these village officials can be utilised?

A. But they must reside in the village.

Q. As an experienced revenue officer, do you think it is possible to utilise the services of patwaris?

A. To a certain extent. You can utilise their services when there is not a rush of work, but when they have got a very busy time, it is not possible to utilise their services.

Dr. DeSouza.—*Q*. Of course patwaris have to inspect a number of villages, but would it not be better to utilise the services of village headmen?

A. There are Mukadams, but sometimes these Mukadams reside at some other place and leave their Gumashtas behind in the village and they are not literate. They will be of no use.

Q. What sort of duties do they discharge?

A. Statutory duties, they have to report crime, births and deaths.

Q. That certainly requires a certain amount of education?

A. They go to the patwari or some other educated man in the village and get their reports written by them. When the process-server does not know a particular party to be served, he can go to the patwari who may point out the man to him.

Q. Will the executive authorities object to it?

A. I should think not.

Q. At any rate the patwari can do this duty along with other duties?

A. Yes.

Mr. Justice Stuart.—*Q*. Do you think that the process-server really requires very much the assistance of the patwari or somebody else in finding out the man? Do you not think that if the process-server is an intelligent man he can find out the man at once without any trouble and difficulty? If he only wants to find out the man he can do so.

A. Yes.

Q. If he is only properly checked and supervised by the nazir, I consider the thing will improve straight off?

A. Yes.

Q. Perhaps you will agree with me that when a *nai* or his wife who is sent out with invitations to a wedding can find out the men to whom invitations are sent in spite of their being quite ignorant of the whereabouts of those people in the village, a process-server will find no difficulty in finding out the man on whom the process has to be served? Do you not think that if a process-server wants to find out the man, he could do so without any trouble?

A. Yes.

Q. Do you not think that if these men are properly supervised and bad work on their part ends eventually in dismissal, there will be some improvement?

A. Yes.

Q. We notice that in some provinces the process-server on the revenue side is quite good, while the process-server on the civil side, although he belongs to the same class and is paid equally, is quite bad. I suggest the explanation is that the one is not well supervised and the other is well supervised.

A. Yes.

Dr. DeSouza.—*Q*. Is there no complaint as regards the service of the processes issued by the Tahsildars?

A. No, as the tenant in the village is known to everybody there is no difficulty to serve him.

Q. I think there would be congestion of service as in the civil courts?

A. It is, but not to the same extent.

Q. Did you ever hear charges of fraudulent service?

A. I have not heard any such complaint.

Q. No complaint in the land suits at all?

A. Nothing of the sort.

Mr. Justice Stuart.—*Q*. What are your views about the prospects of village Panchayat Courts in this Province?

A. We have the Village Panchayat Act but so far no Panchayat Courts.

Q. Will the experiment soon be made?

A. Yes.

Q. Do you think that it will have a chance of success?

A. Before trying one cannot give his opinion.

Mr. Mitchell.—*Q*. I think there is no keenness of establishing such courts.

A. No.

Chairman.—*Q*. Keenness on the part of the parties or keenness on the part of Government?

A. I think both sides.

Mr. Justice Stuart.—*Q*. May I put a suggestion to you. Do you think that it would be possible to create Divisional Benches for hearing all appeals under Rs. 1,000—a bench to consist of two selected Subordinate Judges who would do nothing but the hearing of appeals not only for one district but for more than one—the amount of their work being limited by their capacity and their decision would be final on facts and law subject to two qualifications, one of which is that if they differ an appeal would lie to the Judicial Commissioner as of right and the second qualification is that if they consider a point of law of great importance—a point upon which there should be a precedent which should govern in future—they will have power to refer the matter for a decision on the point to the Judicial Commissioner? Do you think it is a feasible or a desirable suggestion?

A. If you have got selected Judges for that purpose I think the suggestion is worth trying.

Q. I mean if you have good Subordinate Judges.

A. Then it is all right.

Dr. DeSouza.—*Q*. For the purpose of working out this scheme do you consider that one Subordinate Judge—a really good Subordinate Judge—would not be sufficient?

A. No, there must be two Subordinate Judges.

Q. What would be the advantage of having two Subordinate Judges? Why do you prefer two instead of one?

A. There are already District Judges and Additional District Judges who hear appeals and then there will not be any advantage in creating separate courts.

Mr. Justice Stuart.—*Q*. But by doing this you would make the thing final and it would be rather unfair to give the litigant the same tribunal and make that final. If you are going to make it final then you must strengthen the appellate court.

A. A bench, I think, would be preferable.

Sir T. Desikachari.—*Q*. For suits of all values?

A. No, only up to Rs. 1,000.

Q.—It would increase the cost of the establishment. You would have to appoint more Subordinate Judges.

A. You will require some more, I think. Of course some of the present staff will be relieved and you will be able to utilize them there.

Mr. Justice Stuart.—The question of expenditure is not the question which I thought of. If the scheme is considered feasible, it will have to be worked out by the provinces themselves but if you are taking the work from a District Judge on a salary of Rs. 2,000 and handing it over to two officers on a salary of Rs. 850 it would be a saving of Rs. 300 a month.

A. Yes.

Sir T. Desikachari.—*Q.* In that case you are in favour of a decrease in the number of District Judges?

A. That will have to be considered.

Q. Will there not be any reduction in the number of District Judges?

A. I don't think so.

Mr. Justice Stuart.—Reduction will not be in the District Judges but in Additional District Judges. In most provinces there are Additional District Judges.

A. Yes, that is so.

Dr. DeSouza.—*Q.* I ask you to approach this question from another point of view. You have got many acquaintances among litigants in this country, you are a high Government Officer and a big landlord and probably you must have had litigation yourself. Do you consider that the public apart from the lawyers will be satisfied if they are deprived of the right of access to the High Court and if their final court of appeal in suits under Rs. 1,000, which may, as you know, involve questions of land and other important questions,—be made local benches consisting of two Subordinate Judges.

A. I think they will be saved from the trouble of going to the Judicial Commissioner's Court and in this way will be able to get speedy justice.

Dr. Gour.—*Q.* Have you considered that we will be sacrificing a very great advantage of taking cases direct to the High Court where you get better law and where the case is tried on the principle of law which is better understood by the High Court than by the Subordinate Judges?

A. There are perhaps very few intricate questions involved in these cases.

Q. It may be a case of hundred rupees, a hundred rupees mean a lot to the litigants and there is a poor man who, in his whole life, depends upon it. He finds that two Subordinate Judges have disposed of him. Won't he go with a roll of paper and say " Where is the justice "?

A. He will probably have the privilege of revision.

Mr. Justice Stuart.—I do not think that we are clear on the point. If a man has a grievance because his appeal has been disposed of by the Subordinate Judges, he will probably have a grievance because his appeal has been disposed of by one Judicial Commissioner. I see no reason to humour those who take up that sort of attitude. Of course the difficulty is this. There are cases under a thousand rupees in which a point of law of extreme difficulty will arise. But in these cases it will be open to the bench to refer the point to the Judicial Commissioner, and if they are competent and honest they will not have the slightest hesitation in referring such cases to the Judicial Commissioner. This is done already in some places. For example, the Commissioner of Kumaon has the right, in case of difficulty, to state his cases for decision to the High Court, and generally we find that he takes advantage of that.

Sir T. Desikachari.—*Q.* There is one matter with regard to valuation. Have you taken into consideration the fact that suits which are worth one thousand rupees relate to property really worth four thousand rupees. As to that what do you say about valuation, will you have the Act amended?

A. In that case it will have to be amended.

Q. What you say is with reference to property, the actual value of which is one thousand rupees, but have you further considered suits which though valued one thousand rupees relate to property valued ten times more?

A. I have not considered that.

Dr. Gour.—*Q*. You can very well say that you have valued your suit at the market value and the Court can say "Why should we not charge the court fee over that"? Do you not think that there will be some disparity between the payment of the court fee and the value for jurisdiction.

(No reply.)

Chairman.—*Q*. Can you tell me in what class of cases, in this province, there is a great disparity between the valuation of a land under the Court Fees Act and the market value?

A. I am sorry I cannot.

Q. If you have a suit valued under thousand rupees for court fees, will you be able to get a market value of fifty thousand rupees for it in these parts?

A. I have no experience.

Mr. Justice Stuart.—*Q*. I think we will have to exclude such cases from the jurisdiction of the Bench and after exclusion of such cases we will have to see how many cases will be left and what will be the advantage in introducing this Bench, and that will be for each province to decide for itself. Undoubtedly in many provinces these benches would work well?

A. Yes.

Q. What is your idea about calling unnecessary evidence?

A. Of course some witnesses are called who are unnecessary and are then given up.

Q. Do you find cases like this? A man begins by putting down 10 witnesses. On the first day of hearing 7 are heard. On the next day of hearing two are heard and one is reported to be ill. He then applies for an adjournment for hearing the man who is reported to be ill and asks and receives permission to bring 8 new witnesses. On the next hearing one man is reported to be ill and six of the new witnesses are heard and then he applies for an adjournment and applies for permission to summon 9 more new witnesses and he gets that. Do you know that such things happen?

A. I don't know.

Q. I have just been looking into the records of the Judicial Commissioner's Court and in the very first case that I picked up at random I found that this process was palpably done on no less than 7 or 8 occasions. The evidence was taken in this way for 18 months. The case has been decided by the Judicial Commissioner's Court and not one witness so-called was found to have spoken the truth. Don't you think that in such cases the court ought to have made the party who called those witnesses bear the whole costs?

A. Yes.

Q. With regard to guardians *ad litem*, would you be in favour of giving the court certain powers to oblige people who are natural guardians to be guardians?

A. I think so.

Q. For example a brother who is the managing member of the family and who really represents his minor brother flatly refuses to be his guardian *ad litem* although he is himself a defendant.

A. Perhaps it may be that their interests are adverse.

Q. But if both the brothers have got an interest in seeing that the suit is dismissed?

A. It may be so.

Q. You are also in favour, I find, of written interrogatories in respect of commissions.

A. Yes.

Q. Have you seen very much in the course of your experience as to champerty and maintenance?

A. No.

Dr. Gour.—What is the advantage of the rent suits being tried by the tahsildar? The appellate court is the District Judge's Court, a purely civil court.

A. I don't see any particular advantage excepting of course that the procedure is somewhat more elastic.

Chairman.—*Q.* Is the tahsildar's court nearer to the village than a second class Sub-Judge's Court?

A. Of course in every tahsil town there is a Subordinote Judge's Court.

Q. So, there is no advantage?

A. No.

Sir T. Desikachari.—*Q.* I see from the report that naib-tahsildars are appointed as civil law Subordinate Judges for the purpose of disposing of rent suits?

A. Yes.

Q. Is it that the naib tahsildars are posted in places where there are no Subordnate Judges?

A. No. He is in every tahsil and most of the tahsils have got Subordinate Judges. I think only few have got none.

Chairman.—*Q.* If you take the rent suit work from the tahsildar and put it on to the Subordinate Judge's Court, that would tend to give a greater congestion in civil court? The tahsildar will have to do less work.

A. But, it will shorten delay.

Q. If you take away rent suits from tahsildars and naib tahsildars, certainly they will have other work to do?

A. Yes, they will do revenue and criminal work. But the work of civil courts, I mean of Subordinate Judges, will be increased, or more Subordinate Judges will have to be appointed.

Sir T. Desikachari.—*Q.* With regard to touring tahsildars and naib tahsildars, could they not dispose of cases as near the village as possible?

A. They are supposed to do so.

Q. In Madras all rent suits that are tried by deputy collectors are either disposed of near the village or in zamindari cases within the precincts of the zamindari. Well, why should not this procedure be adopted here?

A. That procedure leads to delay here.

Dr. DeSouza.—*Q.* So far as the public are concerned, do you think there is any feeling in the matter that they prefer to have their cases decided by munsifs rather than by tahsildars and naib-tahsildars?

A. I do not think there is any pronounced feeling about that. They will not object to their cases being tried by munsifs; they are quite indifferent. The only question is with regard to delay. If delay can be avoided by making some change, then it is all right. There is no question of principle involved.

Dr. Gour.—*Q.* About the constitution of appellate benches, do you think that if these benches of Subordinate Judges are constituted, there will be a sufficiently strong bar in the mofussil to argue small cases up to Rs. 1,000 on facts and law before these appellate benches?

A. In certain cases, but I think these benches will sit at district headquarters. I cannot say exactly whether the mofussil bar will be sufficiently strong to argue these cases before these benches.

Mr. Justice Stuart.—There will be, say, one appellate bench in Nagpur, another at Jubbulpore and another will be at Amraoti.

A. Litigants will have to come to headquarters and they will be in doubt whether pleaders at Nagpur or Jubbulpore would be able to help them much.

Dr. DeSouza.—*Q.* Do you think that in small cases of that sort pleaders likely to be engaged would be very much better in Nagpur than in Jubbulpore?

A. But they can take the opinion of these people in Nagpur and fight out the case accordingly. They can consult them.

Dr. Gour.—*Q.* On reflection you think that the constitution of appellate benches of Subordinate Judges in a proposal of doubtful advantage?

A. Well it may be tried.

Q. You say that there are both objections and advantages and you cannot give a definite opinion till the question is thrashed out in detail?

A. Yes.

Chairman.—*Q.* Have you anything to say with regard to the Judicial Commissioner's Court?

A. There is great delay in the disposal of appeals in that court.

Q. I understand that a fifth judge is being appointed and steps are being taken to expedite the disposal of appeals?

A. Yes.

Q. Have you paid any attention to the question of translation?

A. That is a great complaint of course. Questions were asked in the Council and resolutions were also moved here with regard to the same subject. Litigants had of course objected to the costs of translation.

Q. Do you not think that the objection was not so much with regard to that as to certain orders passed by the Judicial Commissioner? He would say that he would not look at certain documents because they had not been translated.

A. I have no knowledge of that.

Q. Translations are made to save the time of the High Court Judges. In bench appeals there are vernacular documents which may be of considerable importance but which may at the same time be quite difficult to decipher and to translate. If translation is not made of these documents then a lot of time is wasted for which the State has to pay. Do you not think that it would be possible for the judge who tried the case in the court below to state that such and such documents are really important and should be translated?

A. Yes, that would be better.

Q. If some moderate business-like proposal of that sort is made, do you think that the Legislative Council will view it with open mind or regard it as unobjectionable?

A. I have no knowledge about that.

Q. But do you consider that this proposal looks like an improvement on the existing system?

A. Yes.

Dr. DeSouza.—*Q.* There was a recommendation by the Retrenchment Committee to have all appeals between Rs. 5,000 to Rs. 10,000 disposed of by the District Judge instead of being sent to the Judicial Commissioner?

A. I have no knowledge, but I think cases up to Rs. 5,000 are disposed of by District Judges.

Q. Have you got any suggestion to make about the recruitment of Munsifs?

A. I do not think so. I think three years' practice at the Bar would be sufficient. You cannot have any other special training.

Written statement of Mr. H. D. COGGAN, Manager of the Central Indian Mining Co., Ltd., Kamptee.

Question 6.—I am unable to quote any concrete instances as far as judicial proceedings are concerned, but from my experience of executive matters I consider that the too frequent transfer of judicial officers from one district to another must be an impediment to the speedy dispensation of justice.

Question 8.—I do not think that the concentration of many civil courts in one place is responsible for the present delay, but the insufficiency of efficient members of the legal profession and the excessive demands for the services of its abler members. The prescription of a higher standard of efficiency for the profession appears to be the only remedy.

Question 13.—I think that selected Sub-Judges and District Munsifs might be invested with powers to conduct land acquisition proceedings.

Question 15.—I can see no reason why suits to enforce simple mortgages by the sale of the mortgaged property and suits relating to partnership with small capital should not be dealt with by Provincial Small Cause Courts. To these I would add suits for the recovery of rent other than house-rent, at present excluded by the provisions of Schedule II (8) of the Provincial Small Cause Courts Act.

Question 16.—I consider that the application of the procedure under paragraph 2 of section 106 of the Transfer of Property Act to civil suits would be desirable and tend greatly to avoid the delays caused by wilful evasion of service. I think the procedure should be made applicable both to parties to a suit and to witnesses.

Question 28.—I consider that the more extensive use of the post office for the service of notices and summons, at places where there is a registered service, would largely reduce delays. The avoidance of service is even then possible by refusal to accept a registered article but certification by the post office that the article was tendered and refused should be accepted as evidence of service.

Village officials cannot be wholly trusted for the purposes of process-serving but might be used for the purposes of the application of section 106 of the Transfer of Property Act, jointly with the parties serving such notices or with persons authorised by them in that behalf.

Question 29.—The rule suggested would be advisable.

Question 30.—I consider the adoption of this suggestion most necessary. A case has recently come to my notice where a process-server has reported to the court his failure on six occasions to find the residence or office of a well-known business man who was summoned as a witness in a civil suit.

Question 33.—I consider that the examination of both plaintiff and defendant as part of the trial, at the beginning of it, before any witnesses are examined or summoned, would narrow the issues and minimise the introduction of irrelevant evidence, as after thoughts, and the calling in of witnesses unnecessarily. I consider that the multiplicity of witnesses is one of the chief causes of the law's delays.

Question 34.—The provision in Order 16, Rule 16, Clause (1), does not appear to me to be strictly enforced. I would suggest that in order to avoid the issuing of summonses to a witness again and again for the several hearings, the date of the next hearing be made known to him at the hearing at which he attends and an acknowledgment taken from him in writing to the effect that he has been so notified. His expenses or fees for attendance at the next hearing should be paid to him at the time.

Question 35.—My experience of the law courts is small but from such experience as I have had I consider that a great deal of unnecessary and avoidable oral evidence is let in and I consider that the suggestion contained in Question 33 would obviate much of this. Before a witness is examined or summoned the parties to the suit should be obliged to state exactly what point or points it is sought to prove by his evidence, and his examination confined to those points. If, however, such points appear to the Judge to be irrelevant to the issues the examination or summoning of such witnesses should not be allowed.

Question 37.—I think the suggestion that courts should have discretion to fix a time limit for the examination and cross-examination of witnesses is a good one.

Question 49.—Suits are not tried continuously day by day in a large number of cases, frequently on account of the absence of witnesses and not infrequently for the convenience of one or other or both of the parties themselves and of their legal representatives. The remedy appears to me to be to refuse adjournments on any grounds whatever provided that all witnesses summoned through the Court are present and all documents, the production of which has been ordered by the Court, have been produced.

Question 51.—Any system that would give special expedition to commercial suits would, of course, be welcomed by the commercial community but it is difficult to see how special expedition can be given to such cases any more than to others unless they are tried continuously day by day subject to the conditions referred to in my answer to Question 49.

Question 56.—(*a*) I consider that the curtailment of the period for the execution of money decrees from 12 years as provided in section 48 of the Civil Procedure Code might without disadvantage to any one be altered to six years or even less; (*b*) that Article 182 of the Limitation Act might be altered by substituting one year for three years and (*c*) that the starting point might be altered from the date of the last application to the date of the last order on the last application. I do not think that it should be necessary for a decree-holder to apply for a fresh order at any interval but that he should be allowed to execute his decree at any time during the time limit.

Question 58.—I think that Order 21, Rules 1 and 2, should be altered so as to restrict pleas of payment out of Court to payments through the post office or a registered bank or in the presence of the Sub-Registrar. Payment to the vakil of the party to whom the payment is due is undesirable on the grounds that he is not a representative of official authority.

Question 59.—I can see no objection to the transferee of a decree, on filing an affidavit by the transferer to the fact of the transfer, to have execution as though he were the original decree-holder pending issue of notice to the transferer but I do not think that the second proviso to Rule 16 of Order 21 should be deleted or modified, as a partner may in collusion with the plaintiff assist in the obtaining of a money decree against himself and his partners with a view to gaining at the expense of the other partners.

Question 60.—Rule 21 of Order 21 appears to me to be unnecessary.

Question 61.—(*b*) It seems to me that Rule 22 of Order 21 will automatically cease to operate if Article 182 of the Limitation Act is altered as suggested in Question 56.

Question 62.—A provision that there shall be no *interim* stay in the case of money decrees may work hardship.

Question 63.—There appears to me to be no necessity for special notices in the different stages of execution proceedings in the case of money decrees sought to be executed by the sale of movable properties and it should be enough if judgment-debtors are given one notice at the beginning of execution proceedings and it is ordered that they should be called to be present in Court at all subsequent stages.

Question 64.—I think that all the measures suggested by this question should be given effect to with the exception that notice of execution petition may be served on the vakil who appeared for the judgment-debtor. I think that the notice should be served on the latter.

Question 65.—I do not approve of the suggestion that arrest warrants might be executed by village officials. They are not of the class nor have they sufficient status to be entrusted with this duty.

Question 72.—I do not think that it should be necessary for the plaintiff to call an attesting witness before he can sue on a mortgage bond but that all such documents should be presumed to be valid and that the onus of proving the contrary should rest with the person disputing their validity. The necessity for the production of an attesting witness may put serious obstacles in the way of filing such suits, if he is hostile to the suitor, and raise questions which would be better dealt with in the course of the trial.

Question 77.—The insistence on a registered document in the case of small partnerships would in my opinion to irksome and prove a hinderance to business. Small partnerships of a temporary nature are frequently entered into in places far removed from registration offices and it would be a waste of time and unnecessary expense to have these registered. I do not think that it should be necessary to register documents in the case of partnerships extending over a period of less than one year.

Question 79.—I think that the discharge of obligations created by registered documents should be valid only if there is a registered document to evidence it and that the cost of registration should be made uniform whatever the value of the obligation.

Question 83.—I do not think that it is necessary to retain the provision in the case of mortgage documents that they should be attested. There is no justification for making a difference between them and sale deeds or leases.

Mr. H. D. COGGAN, Manager of the Central Indian Mining Co., Ltd., Kamptee, called and examined on Monday, the 21st July 1924.

Chairman.—I think you represent the Mining Association?

Mr. Coggan.—I am a member of the Mining Association, but at present I do not hold any office in it. I have been a Chairman of the Association for some time.

Q. What sort of mines are there in this part of the world?

A. Chiefly manganese and coal.

Q. I see you are manager of a Mining Company at Kamptee?

A. Yes.

Q. What Mining Company is that?

A. I am manager of the Central India Mining Company.

Q. In the course of your experience in India, have you much to do with litigation?

A. Not much.

Q. That is, have you had occasions to see how the law courts in this part of the world operate?

A. I have had some opportunities to go as a witness and occasionally as a party to a suit also.

Q. I take it that you would like to speak to us as a member of the public and not so much from the point of view of the lawyer?

A. That is so.

Q. As regards your experience as a witness, have you been called to court several times, without having your evidence heard?

A. No.

Q. You have no complaint of that sort?

A. No.

Q. Witnesses are required, so far as you know, to come again and again and then they are sent away?

A. No. They are examined.

Q. You have no complaint to that effect?

A. Not at all.

Q. As regards your experience as a party, what do you say?

A. There are many delays on account of witnesses not appearing on due dates, and cases are postponed till they are produced.

Q. That is the chief thing you have noticed from the party's point of view?

A. Yes.

Q. Well now, when the case is fixed for hearing—that is to say, after the settlement of issues it is fixed for evidence—I understand the Judge is willing and ready to take it up, but he has to grant adjournments because some of the witnesses are not present.

A. Yes.

Q. As regards those witnesses, who are present, are they sent away?

A. I do not think so.

Q. You think that the Judge hears those witnesses who are present and gives another date for witnesses who are not present?

A. Yes.

Q. Does he do that where the witnesses have been served and are not present or does he do that where they have not been served?

A. I think it is in the case of witnesses on whom service has not been made.

Q. He gives an adjournment so that better process may go against the witness, or with a view to compelling the attendance of a witness, who has been served. In your experience he hears those witnesses who are there?

A. Yes.

Q. What will you suggest to prevent this constant adjournment because witnesses are not present?

A. Very often the process-server is not able to find the witness.

Q. Is that because insufficient address is given or is that because the plaintiff has not taken the trouble necessary to get him pointed out?

A. I think it is on account of the callousness of the process-server.

Q. Do you think that process-serving departments are generally in need of supervision?

A. Judging from the results I think they are.

Q. Have you any complaint as to the corruption of the process-serving department, the nazarat and the peon?

A. I have heard a good deal of that.

Q. Their general reputation for honesty is not high?

A. Quite so.

Q. You think that it is easy for the defendant to get him to pretend that he has not been found?

A. Yes.

Q. Do you think that there will be an improvement if the plaintiff is charged with the service of summonses on his own witnesses?

A. I think that will be a good plan.

Q. Because very few people call those who are utterly unknown or are likely to be hostile. You think that in the ordinary way he will be able to serve them and if he does not serve them and takes proper steps you can say that he has no ground for adjournment?

A. Yes, that will be very good.

Q. I see you have answered some of the questions. What we really would like to get is not so much further legal opinion on particular sections of the Code as businesslike suggestions from the points of view representing the public. Do you think as regards the Judges in the Subordinate Courts in this province that, on the whole, they are a good stamp of men?

A. That is my impression. I have a favourable impression about them.

Q. So far as you know there is no ground for real complaint as regards the attainments of the men and their degree of education?

A. None, whatever.

Dr. DeSouza.—*Q.* Or their integrity or honesty?

A. None, whatever.

Chairman.—As far as you are concerned you have no complaint?

A. No. They are free from such aspersions or charges of inefficiency?

Q. What about the village officials, do you know anything about them?

A. I have come across a good deal in the course of my work.

Q. In connection with process-serving, do you think that the assistance of village officials could be usefully relied upon?

A. I don't think that the village official could be trusted entirely to serve it.

Q. Do you think that the peon could go from the Civil Court to the village and with the assistance of the village official identify the man and have the summons served?

A. I think there should be some assistance of the plaintiff or the defendant or some representative. The peon may not take the necessary trouble.

Q. In some provinces they do require the plaintiff to furnish an identifier and that is in Bengal and Bihar. But it is full of other defects and the identifier is open to corruption if any process is intended to be suppressed. Supposing you are not to have an identifier and the peon does not know the defendant, do you think that if the peon goes to the village and then gets the village official to point out the defendant, and give him assistance in finding out the defendant, he would be given such assistance as one could devise?

A. I think so.

Q. Now, who is the actual official in the village? Who is he?

A. He is usually a very low-paid man.

Q. What do you call him?

A. Patwari. There is also a Kotwar under him.

Q. Who is this Kotwar? One does not want to serve the civil processes through the police. Is the Kotwar really a police official?

A. He is under the Tahsildar. He makes weekly reports to the police.

Q. Do you think for this purpose he would be likely to be of use?

A. Yes.

Q. Is there any other person of rather better standing to whom the civil court peon could go?

A. The Patwari is available for all purposes.

Q. But he is not always in one village.

A. No.

Q. You think the Kotwar would be the most practicable person?

A. He is the only one, I think.

Q. If he were given something out of the process fee, he at any rate would be of some service.

A. Yes.

Q. So far as you are concerned, you would not object to the time for execution of the decree being cut down if the necessity of taking steps-in-aid of execution is abolished?

A. Yes.

Q. You would like to restrict pleas of payment out of court to payments that were certified?

A. Yes.

Q. You are not in favour of insisting on a registered document in the case of small partnerships?

A. No.

Q. I see you say that small partnerships of a temporary nature are frequently entered into in places far away from the Registration Office.

A. Yes.

Q. Have you experience of Berar as well as the Central Provinces?

A. No.

Q. Have you any experience as regards rent suits?

A. No.

Q. I understand there is very little commercial litigation of any sort in this province. Have you sometimes to do with a certain amount of commercial litigation?

A. Very little. I have been concerned with only 3 or 4 cases.

Q. What class of commercial litigation was it?

A. Failure to deliver the goods.

Q. Apart from that, was there any case of breach of contract, failure to take up the goods, or pay for the goods?

A. That is what I meant.

Q. Are they tried fairly satisfactorily like other suits?

A. Yes. But they are not tried continuously. Sometimes issues are framed which have been thought of afterwards.

Q. As far as the Judge is concerned do they seem to be reasonably competent to try that class of cases as other cases?

A. Yes.

Q. Have you anything else to add besides what you have stated in the written statement?

A. In arbitration cases it is very difficult to find arbitrators.

Q. Have you any experience of arbitrations in this part of the country?

A. No.

Q. Do you know whether they are successful as a rule?

A. I don't know. I have been engaged only in one case where the people were reasonable and abided by the decision of the arbitrators.

Q. Are you aware of cases in which people who go to arbitration afterwards say that the arbitrator was partial or unjust? Have you had any experience in that way?

A. No.

Written statement of Mr. HABIBULLAH, Pleader, Burhanpur.

Question No. 4.—In our provinces (Central Provinces and Berar) no Sub-Judge should be appointed—

(*a*) unless he has practised at the Bar in District Courts at least for five years;

(*b*) unless at the end of five years of his practice he passes a competitive examination, which should be prescribed by the Local Government, in consultation with the High Court;

(*c*) unless he is of, or below, 30 years of age, and

(*d*) he is reported by the District Judge of the district in which he has at least practised for 3 years to be of good behaviour, sound intellect, and judicious discretion.

(NOTE.—Any legal practitioner who intends to enter into Government service as a judicial officer or a Sub-Judge, should get his name enlisted, and a list of such candidates should be kept in every district office so that District Judges may pay special attention to the careers of such candidates during the 5 years' practice preceding the competitive examination; and no candidate should be allowed to attend such competitive examination without the production of certificates of fitness from the District Judge.)

Question No. 6.—Yes. A judicial officer should be kept at least for 3 years at a place, but not for more than five years. If he is a good man let other districts be also benefitted by his goodness. If, however, he is not, let him be shared by other districts also.

Question No. 8.—Yes. It would be much better if each tahsil gets a judicial officer.

Question Nos. 24 and 33.—On the date of first hearing (all the defendants represented), all the parties to the suit should be very minutely examined and cross-examined by the presiding officer who would take into consideration all the questions that would be suggested to him by one party for cross-examining the other party. The party should not only be examined and cross-examined with regard to real points in controversy, but they should also be examined and cross-examined as to by what oral and documentary evidence it would support and substantiate the point the onus of proving which lies on him. If he wants to substantiate the point by oral evidence the name or names of his witnesses should at once be ascertained and he should further be asked as to how that particular witness would substantiate the particular point in controversy. If he wants to substantiate the point in controversy by documentary evidence the original document or its certified copy be called for and produced in court. When all the documentary evidence original or otherwise is brought on the record and all the names of the witnesses are ascertained in the above manner then and then only an adjournment should be granted for summoning the named witnesses, and producing the specified documents at a reasonably distant date or dates, so that by the adjourned hearing all the documentary and oral evidence be ready. The hearing for evidence having once commenced should not, as a rule, be discontinued till the whole documentary and oral evidence available goes on the record. After this is done the parties should be called upon to argue out their respective cases, and the Judge after hearing the arguments should immediately proceed to judgment before he takes up any other case. as a rule. This will make justice not only more speedy and less costly, but more substantial also.

Question Nos. 25 and 30.—As a rule the process-server should not go to effect service on a defendant or a witness without the aid of the plaintiff or the party who sides the witness. This will prevent, in majority of cases wilfully avoiding service. In places where there are post offices service may also be effected through post. This will partly avoid delay in disposing of cases.

Question No. 31.—When all the points in controversy are ascertained by minutely examining and cross-examining all the parties concerned, the pleaders of the parties if there be any, should be requested to frame their own issues on a sheet of paper and that sheet be handed over to the presiding officer to be kept on record. The presiding officer should take into consideration such issues and then finally frame his own issues in the case. This will ensure the better framing of the issues.

Question No. 41.—Yes. The suggestion made in question No. 41 is a good one; if it be properly followed, it will surely avoid much delay.

Question No. 44.—As a rule not; but such points of law which go to the root of the claim or the defence should be disposed of before taking any evidence. This will, in several cases ensure speedy justice.

Question No. 56.—I approve the amendments and alterations given in clauses (*a*), (*b*) and (*c*). The suggestion is no doubt a good one, and if properly followed, will certainly end in early disposal of cases.

Question No. 66.—The suggestions contained in clauses (*a*), (*b*), (*c*) and (*d*) of this question are all sound, and if followed, would in respect of sale in execution of mortgage decrees clothe the purchaser with a right to property free from the future litigation to the greatest possible extent. As to the clause (*e*) of this question one month's time, if granted in the preliminary decree would be sufficient; at all events, more than three months' time should never be granted, and this too in very exceptional cases. In simple mortgage suits also preliminary decrees granting one month's time should be passed, but never more than one month granted. In cases in which the security has been exhausted a clause for a personal decree may also be inserted in the final decree.

Question Nos. 72 and 83.—Mortgage deeds should be proved exactly in the same way as the sale deeds and leases are proved. No special provision for calling an attesting witness is, in my opinion, necessary to be retained. From my experience I can speak frankly that owing to the question of attestation in mortgage suits many an attesting witness has very improperly and unjustly enriched himself at the cost of parties.

Question Nos. 76 and 77.—Yes. All future partitions of immovable properties should be evidenced by registered documents.

I would similarly suggest that partnerships started with a capital of Rs. 100 and more, and all contractual partnerships should be evidenced by a registered document. This will prevent much useless and false evidence on questions arising out of such alleged partitions and partnerships.

Question No. 79.—I agree that the discharge of obligations created by registered documents should be valid only if there is a registered document to evidence it (the cost of registration being made uniform).

NOTE.—I should like to suggest here that in cases of registered documents the presumption should be that the document has been duly executed by the person by whom it purports to have been executed, and the person who denies its execution should primarily be called upon to substantiate the plea of non-execution. In cases of non-registered documents the usual course should be followed.

Question No. 81.—Yes. I think the enactment of a rule will be good that no party to a transaction should, in *future*, be allowed to plead that it is a sham or *benami* transaction. This will avoid a good deal of mischief, fraud and a good deal of litigation.

Question No. 85.—Yes, in cases in which near relations are concerned as well as cases in which very respectable persons are concerned courts should be empowered to refer cases to referees.

Question No. 86.—Yes, I would suggest that all the existing law reports should to begin with be sent to an office or officer specially created for this purpose, wherein or by whom, all the law reports on a particular point differing from each other may be duly considered, and the one approved of or amended by such office or officers be finally published. Such final publication on a particular point should be followed by courts. This will prevent good deal of interference with speedy justice.

Question No. 87.—Yes, codification of law to a larger extent would certainly make justice speedy and economical. I suggest that Muhammadan Law (both branches, Shia and Sunni), the Hindu Law and the Law of Torts should be codified.

Mr. HABIBULLAH, Pleader, Burhanpur, called and examined on Wednesday, the 23rd July 1924.

Mr. Mitchell.—*Q.* Mr. Habibullah, where do you practise?

A. I have been practising all along in Khandwa and Burhanpur.

Q. You practise largely on the civil side?

A. Yes, and some criminal work too.

Q. Are there many Muhammadan pleaders in Khandwa?

A. Recently we have three more.

Dr. DeSouza.—*Q.* Are they all Boras?

A. This year we have three Boras. There are two Muhammadans and five Boras but two of them have since changed their place of business.

Mr. Mitchell.—*Q.* Do you think that your clients come in due time to allow you to get proper instructions?

A. There are few intelligent clients of this kind.

Q. Then in the majority of cases it is your experience that the client particularly the defendant, comes too late to allow you an opportunity to put in proper pleadings?

A. Yes.

Q. Do they bring all the documents in the case?

A. As a rule we have to cross-examine them and screw out from them information as to documents on which their defence would be based.

Q. You use the phrase " screw out "?

A. Yes.

Q. Why screw out? Is it due to their lack of confidence?

A. Their ignorance. They do not know what correct information or what relevant document they should put before their counsel.

Q. Do they always give you the names of the witnesses required in the case?

A. On that also we have to cross-examine them. If they have got ten witnesses they would not give all the names.

Q. Is that due to lack of confidence?

A. Ignorance again. They do not suppress this information on account of any bad motive.

Q. Have you had occasion to ask for adjournments because you have not been properly instructed?

A. Yes, I have had to ask for adjournments.

Q. Then in your opinion is that a noticeable cause of delay in justice?

A. It is one of the causes of delay on account of ignorance of the people.

Q. On the whole do you consider that the delay is serious?

A. The delay is serious, but I would not approve that there should not be such delay at the cost of the justice. If we look to delay justice will be sacrificed.

Dr. Gour.—You say that whatever the delay, it is necessary?

A. Yes.

Mr. Mitchell.—You think that any serious hastening of the process might have a bad effect on the quality of justice dispensed?

A. Yes.

Mr. Justice Stuart.—*Q.* Do you not think that it will be possible to speed up a great deal and do everything which you reasonably require, if the following suggestion is adopted? The present practice is that the court fixes a date on which it calls on the defendant to file a written statement. It allows something like this. Say, the suit is instituted on 1st January and you get hold of one man on 1st March. You allow him time till 1st May to file his written statement. He is called on 1st May and when he is called he says " I have got no written statement. I have not consulted the pleader yet ": The court says " very well, file it on 1st June." On the 1st June he turns up and says " I forgot to bring the papers." The Court says " I allow you time till 1st July," and so it goes on till 1st August. Now, supposing instead of that you say to the defendant when he comes to the court on 1st March, " Do you contest?" If he says " No," you decide the case, but if he says " I contest," you say " Very well, I give you 1st May to file your written statement and you go to your pleader to-day." If he does that you have the written statement filed on 1st May instead of 1st August. Do you not think that it might be done in that way?

A. I have not seen a single Judge of the kind who will go on granting adjournments every month—at least in the Central Provinces.

Q. I am very glad to hear that, but such things happen in other provinces. I have seen cases where written statement has not been filed for 12 months.

A. I have also experience of that in one or two cases where the defendant purposely avoided.

Q. But is there any objection to the suggestion that the man should be asked on 1st of March as to whether he would contest? If he says " Yes," he should be asked to go at once to the pleader and the court should say " You should file your written statement on the 1st May. You contest now and you get two months to go to a pleader and to file your written statement." What do you think of this suggestion?

A. It is an excellent suggestion.

Dr. Gour.—Have you considered that every summons that goes to the defendant does imply—that if you do not contest, keep quiet, but if you contest come along?

A. It is so, but in majority of cases the defendants do not read the summonses, and in my opinion the suggestion that has been made to me is excellent.

Q. Your reply is reduced to hypothetical question because you have already stated that the facts postulated by Mr. Justice Stuart do not arise in this province?

A. That is a different thing.

Mr. Justice Stuart.—My point is that some Judges, when they fix a date, include in that date the time within which to prepare the written statement. The man does not avail himself of the time allowed and he turns up on the first date unprepared. My point is that if the man says that he wants to contest you give him reasonable time to prepare his written statement. If the case is a petty case you give him four days, six days or ten days. I have seen cases, in my experience in Oudh, where I do not think that six months' time was too long to prepare written statement, because the man had to go and consult eminent lawyers. There are cases in which even one year might not be unreasonable. My point is that every case should be decided according to the condition of the case. If the Court has given too short a time, the counsel can come up and say " I have got so many documents and I could not get the written statement ready within two months. Will you give me an extension now?" The Court would give him another date. I think the suggestion might be worth considering.

Dr. DeSouza.—Would you go a little further in taking up the suggestion of Mr. Justice Stuart. A date is fixed for the defendant to appear and to state to the Court as to whether he would contest the case or not. You are in favour of that?

A. Yes.

Q. If he does not appear on that date, then, of course, the case would proceed against him *ex parte*?

A. Not on that very date. That date is fixed to get information to prepare his written statement.

Q. Supposing he does not appear on that date?

A. If the suggestion of Mr. Justice Stuart is adopted, then I think one more date should be fixed for actually filing the written statement.

Q. So you will have to issue two summonses instead of one in a case which goes *ex parte*?

A. Yes.

Q. Would that procedure cause delay?

A. It depends upon the peculiar circumstances of the province. In our province the practice is that instructions are given in the summons to the effect that date for hearing is such and such, say, 1st January or 1st February, and that " You have to file your written statement four days or ten days before that date." This practice has been going of late and the defendants have been growing wiser and most of them go to the pleaders in time and they are anxious that their written statement should be ready by the date fixed.

Q. And if they do not?

A. If the time allowed is not sufficient we have to ask for further time.

Dr. Gour.—But such cases are becoming exceptions?

A. Yes, they are exceptions and of late there has been improvement.

Dr. DeSouza.—70 or 80 per cent. of cases, in this province, are uncontested. In such cases do the defendants come before the court and say " We do not contest "?

A. Some of them do come and admit the claim. Some of them say that they wanted to settle out of court and therefore the cost should not be awarded.

Dr. DeSouza.—Now under the Code, the law says that if the defendant is served and does not appear on the day fixed, the court shall proceed against him *ex parte*. That means it becomes the duty of the court to record some evidence and make out a *primâ facie* case. Would it be possible to alter in a certain class of cases at least the form of this process and to say to the defendant " If you do not appear on the day, judgment will go against you " and thus the necessity of summoning the plaintiff and taking evidence be done away with?

A. That will make them a little more cautious.

Dr. Gour.—Without evidence?

A. No.

Q. That was the question.

A. Even if the defendant knowingly and intentionally does not appear, without evidence no judgment should be passed.

Chairman.—*Q*. This is generally done every day in England. The point is this whether the non-appearance of the defendant after a warning may not be taken as a practical admission of the claim. A man gets a summons. He is told " The plaintiff claims Rs. 50. If you want to contest this, turn up on such and such a day. If you don't turn up judgment will go against you for Rs. 50." If the man does not turn up after service is there any objection in giving a judgment for Rs. 50?

A. May I know, Sir, whether you take this simile from England?

Q. Yes. If there is something in Indian conditions, that is one thing. Up to the present it is rather only theoretical. As long as the man is served and he is told exactly what will happen if he does not turn up, is it very different from the case of giving a judgment on admission?

A. The conditions in England and India are quite different and I would not persuade myself to give my consent to this.

Q. Now what is the condition in India that, you think, makes it undesirable to apply this form of procedure?

A. Ignorance.

Q. Do you think that the man would not read the summons?

A. There may be other circumstances which he cannot foresee. He might be deceived. Some relation of his may die. One can't know what emergencies will arise.

Mr. Justice Stuart.—The point is this. Is a man really better off under the present arrangement? If a plaintiff deliberately gets a summons served on the wrong man and is so dishonest as to deliberately bring a false claim, there will be little difficulty in procuring false evidence. How is the defendant better off? In the end he will have to get the *ex parte* decree set aside. I suggest that such a dishonest plaintiff will invariably produce dishonest evidence and get a decree. So what difference does it make?

A. I am not able at present to meet your arguments in any way.

Q. Now, in your experience how often have you known of a court refusing to grant an *ex parte* decree on the ground that the evidence was insufficient?

A. There have been such cases.

Q. In the whole course of your time, can you remember five such cases?

A. I can say that some such cases were dismissed for want of proof even in the absence of the defendant.

Q. Will it be five or six?

A. I would not commit myself to any number. It may be about 20 to 25.

Q. Well, my point is this. Nobody wants to protect the defendant more than I. I very much doubt whether by the present system you protect him at all. There have been a very large number of fraudulent cases in which the man had not the slighest difficulty in procuring false evidence, so that if an *ex parte* decree had been passed without any evidence at all, the result would be exactly the same. If the defendant was really protected by the production of evidence, I would not suggest the passing of a decree without evidence. But my experience is that he is not protected in the least and that the worst fraudulent cases have not been *ex parte* at all and there have been cases in which judgment has been confessed by a man who has personated the defendant. That is the worst form of fraudulent cases and a very common one.

A. Yes.

Dr. Gour.—*Q.* Have you not had cases where the plaintiff got the summons served upon a person other than the defendant and got a decree against the defendant?

A. I do not know a single instance of the kind; but I hear that there were such instances in Nagpur and Bombay.

Mr. Mitchell.—Mr. Habibullah, in answer to Question No. 44, you say that the points of law which go to the root of the claim or the defence should be disposed of before taking any evidence. This will, in several cases, ensure speedy justice. Is that generally done by the courts in Khandwa?

A. In very few cases, but it ought to be done. That is my opinion.

Q. If it is not done at present can you tell me why it is not done?

A. It depends upon the peculiar temperament of the Judge.

Q. Have you many cases where a suit has been decided on a preliminary point of this sort and a fresh trial has been ordered by the Appellate Court?

A. I cannot say one way or the other. My memory fails me.

Q. Do you think that the reason is simply due to the idiosyncrasy of the Judge?

A. He does not do that intentionally, but he sometimes expresses his fear that the case may be remanded and there may be some difficulty. It is better to decide the whole case so that he may not get a remand hereafter. It is in that sense that he wants to decide the whole case.

Q. In answer to Question No. 86 you have suggested that the existing law reports should, to begin with, be sent to an office or officer specially created for this purpose. Can you give us an idea of the status of this officer?

A. You mean his qualifications.

Q. Yes.

A. He must have the qualifications possessed by the Judges of the Privy Council. I have not made my answer complete. He should be an officer possessing the qualifications of Judges of the High Court or Privy Council. He may make his own suggestions and if he thinks it proper to send his papers to the Privy Council and get its opinion, he may do so and then publish it.

Q. Do you mean to say that the final publishing authority would be the Privy Council; if so, would it not involve great delay?

A. I would prefer this delay to the inconvenience to which the Judges are put otherwise. There are no rules that they should follow. The Bombay High Court says something, the Calcutta High Court says something else and the Madras High Court says something quite different. So the Judges are put to great inconvenience.

Q. Do not the Judges here follow the rules laid down by the Nagpur Supreme Court?

Mr. Justice Stuart.—I think the best method would be to follow Calcutta whenever Nagpur is silent, or to follow Bombay which is at less distance.

A. That is not the question.'

Mr. Mitchell.—Do you not think that this committee of publication can be constituted in India in the form of a small committee of High Court Judges?

A. Yes. That is only my idea and it may be improved by others.

Dr. Gour.—You mean to say that the functions of this committee or officer will be to reconcile conflicting rulings of the High Courts and to suggest certain rules which should be followed by all the Judges?

A. Yes.

Q. Would it not be like the advisory committee we have got in Nagpur? All the rulings are brought up before this committee and then it recommends which should be followed and which should not be followed. Do you suggest that there should be a council of law reporting for the whole of India?

A. Yes.

Mr. Mitchell.—*Q.* You recommend that the Muhammadan Law both branches, Shias and Sunnis, should be codified—also the Hindu Law and the Law of Torts. As regards Muhammadan Law do you think it will be popular in the Muhammadan community?

A. If you do not change the principles of Muhammadan Law, of course, there should be no reasonable objection to that.

Q. Do you think there is any chance of the codification of the Muhammadan Law being carried out with the consent of the Muhammadan community?

A. By community if you mean each and every individual then there is no chance, but if you mean the educated persons, *i.e.*, members of the Bench and the Bar and now there are so many people on the Bench and the Bar, then you can codify it with their consultation. In order to come to a point we have now to read pages after pages of books such as Amir Ali's Muhammadan Law and so on.

Mr. Justice Stuart.—*Q.* Do you ever come to any point?

A. Yes, we do sometimes. I would read Amir Ali's or Taibji's Muhammadan Law and then would be able to come to my point.

Q. Would you also be able to understand the Hindu Law?

A. I would not understand the Hindu Law as I would understand the Muhammadan Law.

Mr. Mitchell.—May I take it you consider that the Muhammadan Law is a fit subject for codification, but as a political step the codification of the Muhammadan Law may present difficulties?

A. I do not think there should be any difficulty.

Written statement of Rao Bahadur N. D. WADEGAONKAR, District Judge, Nagpur.

Before I proceed to give answers to the several questions prepared by the Civil Justice Committee, I may observe that speaking generally the evils which have led to the appointment of the present Committee exist in a much smaller degree in this province than in many other provinces. Except in the Judicial Commissioner's Court, there is not much delay in the disposal of suits, appeals and miscellaneous proceedings. Such delay as occurs is generally attributable to the complex nature of suits or to causes beyond the control of the judge. We have in the Judicial Commissioner's Civil Circulars an excellent body of rules which are aimed at minimising the causes of all avoidable delay. For the last five or six years, these rules are being strictly enforced in this province with the result that the duration of suits which would otherwise have, owing to the growing strength of the Bar, considerably increased, has been kept at a fairly low level.

The delay in the disposal of appeals in the High Court is, in my opinion, due to the under-manning of that Court and it requires to be strengthened by the addition of one or two judges.

I do not deny that there is still room for further improvement but here I would like to utter a word of caution. Proposals for shortening the delay in the disposal of cases lead frequently to the advocacy of short and summary methods of justice. While speedy justice is heartily to be desired, it must not be forgotten, that summary justice is frequently an euphemism for denial of justice. Care must be taken that, the remedy proposed is not worse than the disease. It must also be borne in mind that so long as human nature is what it is, even the best attempts to reduce the causes of delay in the administration of justice are liable to be frustrated without the sincere co-operation of all the parties concerned, *i.e.*, judges, pleaders and the litigant public. With even the best rules in the world it would be easy to find loopholes or means for procrastinating the trial of suits if the parties find it to their interest to do so.

From the trend of some of the questions in the Questionnaire of the Committee it would appear that the object of the inquiry is to shorten as well as to put down litigation. That is as it should be. It is the duty of a civilised Government to remove the causes which are the fruitful sources of litigation. If therefore I have rightly understood the objects underlying the questionnaire, I would propose the establishment of Conciliation Courts at the Headquarters of each district and tahsil presided over by two or more gentlemen of position and influence who enjoy the confidence of the public. All money suits irrespective of the value of their subject matter should be filed in the first instance in these Courts with a small institution fee—say five per cent.—on the value of the claim and these Courts should be authorised to dispose of only those cases in which claims are admitted or compromised. Suits in which claims are not admitted or in which Conciliation Courts are not able to bring about an amicable settlement should be transferred for disposal to the regular Courts where full court-fee should be levied. If this proposal is accepted it would be possible to reduce the number of stipendiary judges and there will be a substantial reduction in the cost of administration of civil justice. Besides, when the regular Courts are relieved of a considerable number of money suits—and the number of such suits is very large—they will have ample time at their disposal to devote to contested suits. The evil of delay is really confined to contested suits and if delay in the disposal of such cases is lessened, the object which the Committee have in view will have been gained. With these preliminary remarks, I proceed to answer the several questions formulated by the Civil Justice Committee.

Question No. 1 A. (*i*) In this province the High Court does not take up original cases.

In my opinion, first appeals in the High Court ought to be disposed of within six months, second appeals and miscellaneous appeals within four months from the date of institution.

(*ii*) The time taken up in the disposal of a suit depends more or less on its nature and value. I am of opinion that contested suits at the headquarters of a district and in the outlying places should be disposed of within the period shown below:—

In headquarters Courts.

Value.	Title suit.	Money suit.	Rent suit.
Up to Rs. 1,000 . . .	9 months .	6 months .	3 months.
Between Rs. 1,000 and Rs. 5,000.	12 ,, .	9 ,,	
Over Rs. 5,000 . . .	15 ,, .	12 ,,	

In outlying Courts.

Value.	Title suit.	Money suit.	Rent suit.
Up to Rs. 1,000 . . .	6 months .	4 months .	3 months.
Between Rs. 1,000 and Rs. 5,000.	9 ,, .	6 ,,	
Over Rs. 5,000 . . .	12 ,, .	9 ,,	

Suits in outlying Courts are disposed of earlier because the Bar is not so strong there as at Headquarters and consequently claims are not so keenly contested there.

Regular and miscellaneous appeals in District Courts ought to be disposed of within four months from the date on which they are instituted.

Contested suits in Small Cause Courts ought not to take more than four months.

Question No. 1 B.—Claim proceedings in all Courts ought to be disposed of within three months.

Questions Nos. 2 and 3.—In this province the time taken for the disposal of proceedings of the above nature does not exceed the above limits in many cases except in the Court of the Judicial Commissioner where considerable time is taken up in the disposal of first and second appeals not disposed of under Order 41, Rule 11, Civil Procedure Code as the following table will show:—

Average duration of appeals.

Appeals disposed of by the Court of the Judicial Commissioner.	1920	1921	1922
Regular Appeals.			
First appeals . . .	396·2	442·2	418·7
Second appeals . . .	374·1	358·5	343·5
Miscellaneous appeals.			
First appeals . . .	244·8	247·4	249·8
Second appeals . . .	323·5	242·4	213·0

This delay is, I presume, due to undermanning of the Court of the Judicial Commissioner. The above period is also exceeded in partition, partnership and other suits which involve taking of complicated accounts, but in the nature of things delay in such cases is almost unavoidable.

The main causes of the delay, in my opinion, are as follows:—

(1) The difficulty in appointing guardians *ad litem* to minor defendants. The real guardian who is interested in the litigation takes every opportunity of protracting the trial by refusing himself to act and inducing other relatives (who are likely to be appointed) not to act as guardian.

(2) Inability of pleaders to answer material questions which arise on the pleadings recorded at the hearing in the absence of the parties and to admit or deny documents produced by the opposite party.

(3) Objections raised respecting court-fees and jurisdiction of the Court.

(4) Deliberate withholding of witnesses mentioned in the list with the sole object of protracting the trial and delaying justice.

(5) Pleaders taking up more cases than they can manage, the result being that judges have sometimes to wait for them.

I would make the following suggestions to remedy some of the above defects:—

(1) In suits against minors the plaintiff should be required to name all possible relations of the minor who could be appointed guardian *ad litem*. Notices requiring them to state if they are willing to act as guardian *ad litem* for the minor should then be sent to all the persons named and in case of their refusal or default of appearance at the date of hearing, the Court should forthwith

appoint a pleader or one of its officers as guardian. This would make it possible to have a guardian appointed for the minor at the first hearing of the suit.

(2) Parties generally put in their appearance on the date of the first hearing through pleaders who are not prepared to answer all material questions arising out of pleadings, nor are they accompanied by any person who can answer all material questions. I would therefore propose that it should be made obligatory for the parties to attend in person or to send a representative who can answer all material questions and admit or deny documents produced by the opposite party. Courts should have discretion to treat failure in this respect as tantamount to non-appearance.

(3) Very often, in suits for possession of land and houses, objection is raised as to the value of the subject-matter of the suit and about 4 or 5 months' time is taken up in trying the issue regarding valuation. As the bulk of title suits relates to agricultural land assessed to rent, it would be highly desirable to fix an artificial value of such land separately for purposes of court-fee and jurisdiction at a certain multiple of the assessed annual rental of such land. Similarly in suits for possession of land assessed to revenue its artificial value for purposes of jurisdiction should be fixed at a certain multiple of the assessed revenue. This will mitigate the evil of technical objections regarding valuation of land for purposes of court-fee and jurisdiction.

(4) The practice in the courts in this province is to require parties after issues have been framed to put in lists of witnesses they want to examine in the case, but it is generally found that with the object of delaying the proceedings and of improving the evidence as the trial proceeds, parties deliberately keep back a few witnesses named in the lists. The adjournments caused in consequence of this are taken advantage of by the parties for summoning or producing new witnesses. On the authority of the cases reported in 13 C. P. L. R. 152 and 20, Calcutta, 740, the Courts can neither refuse to issue summonses to new witnesses nor to record the evidence of such witnesses if produced unsummoned. To remedy this, the Courts should have power to refuse to summon new witnesses or to record their evidence.

(5) Pleaders should not take more work than they can conveniently manage but I fail to see how this can be enforced.

(6) In order to avoid frivolous defences and to shorten the duration, it may perhaps be advisable to offer some inducement in the shape of partial refund of court-fee where the claim is admitted or compromised before issues are framed or where the defendant does not put in appearance at all and the case is decided *ex parte*.

Question No. 4.—(*a*) To fill up the vacancies in the Central Provinces Judicial Service a competitive examination should be held in the beginning of each year in English and in the knowledge of the practical work in the Law Courts. Pleaders who have put in at least three years' practice at the Bar and who are not more than 30 years of age should alone be eligible for appearing at this examination and appointments should be made from amongst the successful candidates in the order of their merit.

(*b*) No officer who has not worked for at least five years as Subordinate Judge and for at least two years as Additional District Judge should be appointed a District Judge.

Question No. 5.—If my suggestions in answer to Question No. 4 (*a*) are accepted, I do not think any further training for judicial officers is necessary.

Question No. 6.—Yes. In this province transfers among Subordinate Judges are very frequent and a reference to the History of Services of Gazetted Officers of this province will show that many of them have had as many transfers as the number of years for which they have put in service.

The following table shows the changes in the personnel of the different Courts at Nagpur during the last four years:—

No.	Name of the Court.	Number of changes or transfers of the presiding Judge.
1	Additional District Judge	Six.
2	First Subordinate Judge, 1st Class	Six.
3	Second Subordinate Judge, 1st Class	Eight.
4	First Subordinate Judge, 2nd Class	Nine.
5	Additional First Subordinate Judge, 2nd Class . .	Five.
6	Second Subordinate Judge, 2nd Class	Four.
7	Judge, Small Cause Court	Twelve.

I would therefore suggest that a Judicial Officer should ordinarily be kept at one place for a period of at least three years unless exigencies of public service or the particular circumstances of any officer necessitate an early transfer.

Question No. 7.—Ordinarily the average outturn of work in a particular Court for the past three years should be taken as the proper standard of efficiency for that Court. The present system of check in this province is this. Every Court submits a monthly statement of civil business to the District Judge who in his turn submits it with his remarks to the High Court. This ensures the necessary standard.

Question No. 8.—In this province civil work up to the full capacity of judges at outlying Courts is given to them and it cannot be said that there is undue concentration of Courts in this province at any place.

Question No. 9.—The Central Provinces Civil Courts Amendment Act No. 8 of 1923 has already raised the ordinary jurisdiction of Subordinate Judges, 2nd class, from Rs. 1,000 to Rs. 5,000 and with the existing Courts at tahsil headquarters, it cannot be said that there is any undue concentration of Courts at Headquarters.

Questions Nos. 10 and 11.—I would not further enhance the ordinary jurisdiction of Subordinate Judges, 2nd Class, in this province but I would raise their jurisdiction in Small Causes from Rs. 200 to Rs. 500 as generally officers of not less than eight years' standing are posted to Courts exercising such jurisdiction.

Question No. 12.—In this province District Judges have already been relieved of miscellaneous work both judicial and administrative. For instance cases under Succession Certificate, Insolvency and Land Acquisition Acts are tried by Subordinate Judges, 1st Class, who are specially empowered in that behalf. Similarly Subordinate Judges are placed in charge of administrative work in different branches such as Nazarat, Copying, Record Room, etc.

Question No. 13.—The investing of Subordinate Judges, 1st Class, with powers to try Probate, Succession Certificate and Land Acquisition proceedings would certainly be acceptable to the public.

Question No. 14.—There are no village Courts and Panchayats in this province and I have consequently no observations to make on the subject.

Question No. 15.—I would make suits mentioned in Articles Nos. 8 and 35 of Schedule II of the Provincial Small Cause Courts Act triable by Small Cause Courts as I do not see the propriety of excluding such cases from their cognizance. At present suits for recovery of rent other than house rent are tried in the Central Provinces by revenue officers who hardly possess any knowledge of Civil Law or procedure. The trial of rent suits by these officers is highly unsatisfactory and there is no likelihood of any improvement in the quality of their work as they do not take any interest in civil work (which they do not regard as part of their legitimate work) and as they are not amenable to the control of District Judges.

I do not agree with the suggestion of making simple mortgage suits triable by Small Cause Courts as such suits are always fixed for final disposal, and when uncontested they are promptly disposed of and there would be no saving of time by their transference to Small Cause Courts. In other mortgage suits of a complicated nature various questions of law and fact arise and I am therefore not in favour of mortgage suits being tried by Small Cause Courts.

Question No. 16.—(*a*) Summary procedure as contemplated by section 128 (*2*) (*f*), Civil Procedure Code, may be applied only to such suits of the nature of Small Causes as are tried *ex parte.*

Question No. 17.—Sub-Registrars as a rule are men of very little education and have no knowledge of law or procedure. They are therefore absolutely unfit for any kind of judicial work.

Question No. 18.—No. The right of appeal is greatly valued by litigants and any curtailment of it will be very much resented.

Question No. 20.—I do not know if many frivolous Second appeals are filed in the Court of the Judicial Commissioner, Central Provinces. Assuming that many such appeals are filed, they are as a rule summarily disposed of under Order 41, Rule 11, Civil Procedure Code, and no further restrictions seem necessary.

Question No. 21.—I do not agree to the suggestion to compel an appellant to deposit the decretal amount in full before a second appeal is allowed to be filed as it will work a great hardship in many cases.

Question No. 22.—The power given in Order 41, Rule 11, Civil Procedure Code, is duly and systematically exercised in this Province.

Question No. 23.—I cannot say if the right of application in revision is much abused, but I agree that in cases of revision under the Provincial Small Couse Courts Act, the decretal amount should be deposited in Court along with the revision petition. I am, however, against the second suggestion of curtailing the right of revision under section 115 against interlocutory orders as such orders, if wrong, should be revised as early as possible by the Highest Court of Appeal in the province so as to avoid further proceedings and consequently the costs.

Question No. 24.—See my answer to questions Nos. 2 and 3.

Question No. 25.—In addition to the ordinary agency of the Courts I would also recommend the adoption of service by registered post, but I am not in favour of the procedure laid down in section 106 of the Transfer of Property Act being made applicable to civil suits. Rule 15, Order 5. Civil Procedure Code, may also be modified so as to include adult female members.

Question No. 26.—Generally speaking plaints are properly drafted in this province.

Question No. 27.—I do not find that the provisions of Orders VII and VIII are very much neglected though pleadings are occasionally defective and ambiguous. The examination of the parties or their pleaders by the Court, however, supplies the defects.

Question No. 28.—I have already recommended the use of postal agency for the service of notices and summonses in addition to service by the ordinary means in my answer to Question No. 25, but I am not in favour of the suggestion to utilise the services of village officials for the purpose of serving processes. They are likely to make false reports owing to the existence of factions in the villages and no effective check over their acts is possible.

Question No. 29.—I agree to the suggestion requiring parties to give a registered address for the service of processes for all purposes of the suit and execution. It would be open to parties to give notice of any change in their address from time to time.

Question No. 30.—I do not agree to the suggestion contained in this question as it is not always possible for the process-server to find time to report himself to the pleader of the party. But under the system prevailing in this province a party can roughly ascertain as to when the process-server is likely to be near about the place where his (the party's) process has to be served. For the purpose of distributing processes to process-servers, a Taluka or Tahsil is divided into a number of circles each containing a certain number of villages and a list of such villages is always open for inspection in the Nazarat. Days of the week are fixed for the issue of processes to each particular circle and similarly dates for the return of the servers are also fixed. This information is always available to a party in the Nazir's department, and the party can, if he likes, have a rough idea as to when the process-server is likely to be at a particular place so as to render him all the necessary help.

Question No. 31.—With a view to ensure the better framing of issues I would suggest that judges should frame issues in the presence of and in consultation with the pleaders of the parties and that the pleaders should be made to state that no more issues are needed.

Question No. 32.—The provisions of Order X, Civil Procedure Code, as regards the examination of the parties are generally followed by Courts in this province but not those of Orders XI and XII. Examination of the parties by the judge is generally thorough and is made in the presence of the pleaders on both sides. The suggestions made by the pleaders, if any, are always considered. The necessity of resorting to the provisions contained in Orders XI and XII, Civil Procedure Code, is not felt as discovery and admission of documents form part of the statements of the parties recorded by the judge. Moreover, as cases are heard within five or six weeks from the date of the registration of the plaint, there is hardly any time for the adoption of the elaborate procedure laid down in these Orders. If, however, anything important has been left out during the examination of the parties, the defect is generally supplied by recording further statements at the next hearing.

Question No. 33.—I am in full agreement with the suggestion that after the framing of issues parties should be examined and cross-examined as part of the trial and then time should be given to them to file list of witnesses and to produce more documents which may have become relevant after the framing of issues and the examination and cross-examination of the parties.

Question No. 34.—The provisions of Order 16, Rule 16, Civil Procedure Code are strictly followed in this province. If a suit is adjourned without examination of witnesses, all the witnesses present are pre-paid for the next hearing and their receipts obtained and filed in the Court. No fresh summonses are therefore issued to them for their attendance at the adjourned hearing.

Question No. 35.—Unnecessary and avoidable evidence is not generally let in in this province. I am not in favour of curtailing the right of parties to examine any number of witnesses in proof of a relevant fact as this right is not much abused. Moreover, the trial judge is not a final judge of facts, and while he may think that a few witnesses have satisfactorily proved a point, the appellate judge may differ from him and consider the evidence insufficient.

Question No. 36.—I am not in favour of proof by affidavits and counter-affidavits as the judge would find his task of deciding cases more difficult than when oral evidence is adduced on both sides.

Question No. 37.—I am not in favour of the suggestion contained in this question. It is always open to Courts to disallow irrelevant and objectionable questions.

Question No. 38.—I am not in favour of extending the application of Order 37, Civil Procedure Code.

Question No. 39.—I consider that the representation by father or manager of a joint family should be considered as sufficient for purposes of binding all the members of the family. It should, however, be open to any member of the family to apply to be made a party to the suit on the ground that the father or the manager does not properly represent him.

Question No. 40.—I am not in favour of the suggestion as it will be very difficult for the legal representative to prove want of knowledge of the proceeding on his part and would lead to perjury.

Question No. 41.—Much delay is caused by the difficulty of appointing a proper guardian *ad litem* for minor parties. I agree to the suggestion contained in this question. See also my answer to questions Nos. 2 and 3.

Question No. 42.—No undue advantage is taken of obtaining *ex parte* injunctions in this province as such applications are not very common and Courts are chary of making such orders.

Question No. 43.—Judgments are not unduly long in this province.

Question No. 44.—Points of law going to the root of the claim or defence are generally disposed of before taking evidence in this province.

Question No. 45.—Dates for original and adjourned hearings are fixed by judges themselves according to the instructions contained in Judicial Commissioner's Civil Circular No. 1-4.

Question No. 46.—Pleaders are consulted in fixing the time required for examination of the witnesses according to the instructions contained in Judicial Commissioner's Civil Circular No. 1-5, paragraph 4.

Question No. 47.—Trials in this province are not unduly delayed by the examination of witnesses on commission except where commissions have to be issued to distant places, *i.e.*, when a witness resides at a distant place outside the jurisdiction of the Court. I am in favour of insisting upon interrogatories being filed as the other side may not be in a position to go all the way to cross-examine a witness. Unless therefore interrogatories are filed the opposite party will not be in a position to file cross-interrogatories. But where both parties ask for a *vivâ voce* examination, the judge should invariably permit it. In my opinion, the commissioner possesses all the powers of a judge of ruling out objectionable and irrelevant questions and no addition to his powers seems necessary.

Question No. 48.—Written applications supported by affidavit for adjournment need not be insisted upon as unnecessary adjournments are rare in the Central Provinces. The instructions contained in Judicial Commissioner's Civil Circular No. 1-5, paragraph 5 are very strict and exhaustive and are carefully followed by the Subordinate Courts. In case of avoidable adjournments, substantial day costs are as a rule allowed and this is a sufficient check upon frivolous applications for adjournments. Before granting the request for adjournment, the Courts in this province do in some cases require a written application supported by reasons and accompanied by an affidavit.

Question No. 49.—Suits are tried continuously from day to day in the Mofussil Courts of Central Provinces and all witnesses in attendance are examined continuously from day to day under instructions contained in Judicial Commissioner's Civil Circular No. 1-5, paragraph 9. Such suits are always taken at the beginning of the day.

Question No. 50.—The Judicial Commissioner's Court in Central proper inspection of the Lower Courts. Under the standing orders, District Provinces exercises sufficient supervision over District Judges to ensure Judges are required to inspect all the Courts and offices subordinate to them at least once in a year and they have to submit quarterly statements showing their inspections of subordinate Courts and offices made during the quarter. In case any Court or office has not been inspected during the year, reasons for the omission have to be given.

Question No. 51.—Commercial suits are rare in this Province.

Question No. 52.—(1) Section 73, Civil Procedure Code, which relates to rateable distribution should be amended by deleting the words "for the execution of decrees" appearing in that section. A mere application for rateable distribution although it may not be an application for execution of the decree ought to suffice. At present, decree-holders applying for rateable distribution are often defeated on the technical plea that their application for rateable distribution was not an application for execution in the strict sense of the term.

(2) Order XXI, Rule 54 read with Rule 67, Civil Procedure Code, lays down the order in which copy of the proclamation should be affixed. It says that it should be first affixed on a conspicuous part of the property and then on a conspicuous part of the Court house and Rule 68, Civil Procedure Code, enacts that no sale shall take place until the expiration of 30 days or 15 days calculated from the date on which the copy of the proclamation was affixed on the Court house of the judge. In practice, it happens that much time elapses between the date on which copy of the proclamation is affixed on a conspicuous part of the property ordered to be sold and the date on which it is affixed on the Court house of the judge ordering the sale. The latter copy is always affixed by the server on his return to headquarters from his circle after service of all the processes entrusted to him for execution within his circle and in many instances this is done when less than the prescribed period is left for holding the sale. This gives an additional ground to the judgment-debtors who are dishonestly inclined to apply for setting aside the sale. I therefore propose that Rule 68 should be modified by providing that the period of 30 or 15 days should be calculated from the date on which copy of the proclamation was affixed to the property ordered to be sold. I further propose that the word "then" occurring in clause (2) of Rule 54, Order XXI, Civil Procedure Code, should be deleted as I see no special significance in affixing copies of proclamation in the order laid down in the aforesaid clause.

Question No. 53.—I am in favour of the extension of the principle of section 21, Civil Procedure Code, to proceedings in execution.

Question No. 54.—I agree to the investing of Courts to which a decree is transferred for execution with the powers which the Court which passed the decree has as to adding of legal representatives, recognition of assignments of the decrees, transfer for execution and similar matters.

Question No. 56 (a), (b) and (c).—I am in favour of curtailing the period given in section 48, Civil Procedure Code, for the execution of money decrees to six years. I am also in favour of the suggestion that a decree-holder be allowed to execute the decree at any time he finds it convenient to do so provided he does not exceed the six years' limit, as it will save the Courts' time which is wasted in deciding technical questions of limitation and also questions as to what is or is not a step in aid of execution, etc.

Question No. 57.—I am in favour of the suggestion contained in this question.

Question No. 58.—I do not agree to the suggestion contained in this question as the proposed restriction will cause great inconvenience and hardship to illiterate and ignorant parties. There are no registered Banks in the interior of the districts and there are many cases in which no pleaders are engaged. I would, however, propose that a decree-holder must also certify repayments to Court within three months of the date of the payment as it is not infrequently that a decree-holder credits a false payment in order to save limitation; but it will not be necessary to adopt this suggestion if my suggestion in answer to Question No. 56 is accepted.

Question No. 59.—I agree to the suggestion contained in the first part of this question but not to the deletion or modification of the second proviso of Rule 16, Order XXI, Civil Procedure Code, as it will be difficult to settle the equities arising between the several judgment-debtors.

Question No. 60.—Order XXI, Rule 21, may be deleted but provision should be made that before issuing a warrant for judgment-debtor's arrest Court should have discretion to issue notice to him to show cause why he should not be arrested. A judgment-debtor may be unable to pay for no fault of his and in such circumstances it would be very hard upon him to execute the decree against his person.

Question No. 61.—(*a*) Special notice under Order XXI, Rule 22, Civil Procedure Code, is not necessary. In cases where execution of a money decree by attachment of judgment-debtor's property is sought, notice should in the beginning be issued to the judgment-debtor irrespective of whether the application is or is not within one year from the date of the decree or the last application for execution. This will dispense with the necessity of issuing further notices at subsequent stages of the same proceeding.

(*b*) Subject to the above qualification, there is no objection to the deletion of Order XXI, Rule 22, so far as the rule refers to judgment-debtors only and not their legal representatives.. The reason is that the issue of such a notice to the judgment-debtor serves as a hint to him to evade execution, but in the case of the legal representative, he may not have knowledge of the decree or he may not possess assets belonging to the judgment-debtor.

Question No. 62.—A hard and fast rule preventing stay of execution in all circumstances is likely to work hardship. In my opinion, Order XXI, Rule 26, gives ample scope to Courts for passing suitable orders in case of money decrees.

Question No. 63.—There is no necessity for special notices in different stages of execution proceedings in the case of money decrees and in cases where execution is sought by attachment of property, only one notice in the beginning should be enough. See also my answer to question No. 61.

Question No. 64.—I do not think that it is necessary to serve the judgment-debtor with a copy of the proclamation of sale, for after service of notice upon him as proposed in questions Nos. 61 and 62, it is his duty to be present in Court at all the stages in the proceedings and ascertain for himself the terms of the sale proclamation. Notice of execution petition to the pleader of a judgment-debtor may not be justifiable as the pleader may not be in communication with his client since the passing of the decree.

Question No. 65.—I do not approve of the service of arrest warrant by village officials. See my answer to question No. 28.

Question No. 66.—I agree to the suggestions contained in clauses (*a*), (*b*), (*c*) and (*d*).

Clause (*e*).—Only six months' time is allowed by the preliminary decree and 2 or 3 extensions of about six months each are granted to judgment-debtors in the case of decrees for foreclosure. No extension can be allowed under the law in the case of decrees for sale. In my opinion, six months' time should always be allowed in all mortgage decrees as is done at present. No final decree is necessary where the decree is for sale of the mortgaged property and provision for a personal decree should be made in the original decree if the plaintiff is found entitled to it.

Question No. 67.—Much avoidable delay is caused in the disposal of execution proceedings by frequent orders of stay made by the appellate Courts who make such orders more or less as a matter of course. In future it should be provided that if the appellant asks for stay of execution and his application is granted but his appeal is subsequently dismissed the appellate Court should have power to award interest to the opposite party not exceeding 12 per cent. in the case of money decrees and reasonable compensation in other cases.

Question No. 68.—Yes. I would curtail the power of co-ordinate or inferior Courts in the matter of granting injunctions to stay execution of other Courts' money decrees by imposing restrictions and terms as proposed in the question.

Question No. 69.—The present law of insolvency does not stand in the way of decree-holder getting the fruits of his decree speedily. In this province debtors applying in insolvency are mostly poor agriculturists whose only property consists of occupancy land which is not liable to attachment and sale. In this province, Subordinate Judges, 1st Class, are invested with insolvency powers.

Question No. 70.—Instances of absconding judgment-debtors are almost unknown in this province.

Question No. 71.—I would propose the following modifications of the provisions of the Law of Evidence:—

(*i*) In the case of registered documents admissible in evidence under section 90 of the Evidence Act, the period of 30 years may well be reduced to 20 years.

(*ii*) Certified copies of registered documents should also be admitted in evidence without formal proof when the original would be admissible under section 90 of the Evidence Act.

(*iii*) Certified copies of plaints, written statements, applications, etc., filed in a suit or proceeding ought to be admitted in evidence without further proof—the presumption being that the original was signed and presented by the person who purports to have done so and the burden of proving the contrary should rest upon the party who disputes it.

(*iv*) Documents required by law to be attested may be proved like any other documents.

(*v*) There is some doubt as to whether official records and registers of local bodies like Municipal Committees, District Councils and Local Boards are public documents. I think they should always be proveable like other public documents, *i.e.*, by production of certified copies, and the doubt in this respect ought to be cleared up.

Question No. 72.—It is not necessary to retain the provision that the plaintiff suing upon a mortgage must call an attesting witness to prove it. I would also suggest a modification in the definition of the expression "attestation" so that it may include attestation by a person to whom the executant has admitted execution. Looking to the illiteracy and ignorance of the mass of the rural population, I am not prepared to accept the suggestion that a registered mortgage should be presumed to be valid.

I would suggest that all deeds and documents by which immoveable property is transferred should be required by law to be attested in the above sense.

Question No. 73.—In this province much time is not taken up in obtaining certified copies of documents. I would therefore always insist on production of certified copies of public documents.

Question No. 74.—A period of 12 years should, in my opinion, be the maximum period of limitation except in the case of Government and public bodies in which cases also I would reduce the period to half of what it is at present.

Questions Nos. 76, 77 and 78.—I am agreeable to the suggestions made in these questions.

Question No. 79.—I do not agree to the suggestion that the discharge of an obligation created by a registered document should be only by a registered document, as it will work great hardship.

Question No. 80.—The registration of all documents purporting to transfer property worth Rs. 100 or more and also of documents in which the consideration is Rs. 100 or more should be made compulsory when the executant of such documents is a person who cannot sign his name.

Question No. 81.—A party to a document or transaction should be absolutely estopped from pleading that it is a fictitious document not intended to be acted upon unless he pleads fraud, coercion, undue influence or mis-representation. I have every hope that such an enactment will put down benami transactions and assist in the realisation of the fruits of a decree speedily and prevent unnecessary objections to attachment of property.

Question No. 82.—I do not think so. Besides much of the time of the Court is likely to be wasted in deciding the question as to whether a particular suit is frivolous or not.

Question No. 83.—See my answer to question No. 72.

Question No. 84.—I have no suggestions to offer upon the question of champerty and maintenance. English Law should not be made applicable to India as the present case law sufficiently provides against cases where the agreement is against public policy or immoral.

Question No. 85.—See my introductory remarks where I have proposed the establishment of Conciliation Courts.

Question No. 86.—I do not think the multiplication of law reports interferes with speedy justice.

Question No. 87.—I am of opinion that codification of law would help to make justice speedy and economical. The Hindu and Muhammadan Law as also the Law of Torts ought to be codified.

Mr. N. D. WADEGAONKAR, District Judge, Nagpur, called and examined on Thursday, the 24th July 1924.

Chairman.—You are district judge at Nagpur?

A. Yes.

Q. I am much obliged for your careful statement. I would like just to take some of your main points. You propose the establishment of Conciliation Courts. You know that in Bombay that was done at one time?

A. My idea is that those courts had powers to decide all cases, but I would give them power to deal with money suits, and only those in which claims are admitted or compromised. Suits, in which they do not succeed in bringing about an amicable settlement, should be transferred to regular courts. In this way people would be inclined to take their suits to the Conciliation Boards.

Q. Would you prefer Conciliation Boards to village or panchayat courts?

A. I have no experience of village courts.

Q. Do you think that it would be possible to get village courts to decide small money suits—suits relating to movables?

A. Petty suits up to fifty rupees and money claims may be given to them.

Q. Now in this province, I think, you say that there is not much delay except in the Judicial Commissioner's Court?

A. Yes.

Q. And you give the average duration of appeals, not disposed of under Order 41, rule 11, as—second appeals 343 days, first appeals—418 days, miscellaneous appeals—249 days and so on.

Now taking up the causes of delay one difficulty is in appointing a guardian to a minor, and you say that the real guardian gets out of the way and you would agree to the plaintiff tabling all the possible alternative guardians and the court making an appointment then and there.

A. Yes.

Q. Do you think it practicable in the case of a *karta* of a family to oblige a man to be guardian *ad litem* to a minor?

A. I do not think that that would be practicable.

Q. Then you say that pleaders sometime turn up on the first hearing unprepared to answer questions, and you say that it should be obligatory for somebody to be there who can admit or deny documents at the first hearing?

A. Yes, so as to answer questions put by the court.

Q. Then you say that there is a lot of time taken by objections as to valuation?

A. Yes.

Q. And you think that an artificial value of land should be fixed separately for court fee purposes and for jurisdiction purposes; in the case of tenancy land the valuation being so many times the assessed revenue or the assessed rent?

A. Yes. I would give power to the local Government to frame rules on the subject under the Court Fees Act, and the artificial value will be a multiple of the annual rent.

Q. Of course the Local Government have that power under the Suits Valuation Act, already.

A. At least no rules have been framed.

Q. You would like to see that done?

A. Yes. I have a very large experience of these cases. In so many cases frivolous objections about valuation are raised and about 4 to 5 months are wasted in deciding it.

Dr. DeSouza.—*Q.* At what stage and for what purpose are these objections raised?

A. Simply for the purpose of delaying suits and nothing else. The defendant would always raise the objection that the land has been under-valued or over-valued. He would like the case to go from one court to another.

Chairman.—*Q.* But, is not the present valuation 5 or 10 times the revenue?

A. Of course, it is 5 times the revenue; but in the case of land assessed to rental, you have to fix value according to the market value of the land.

Q. I see you say that there are certain rules which prevent your refusing to issue summons to new witnesses. What you would like, I take it, would be this. If the plaintiff has one witness who has been served but has not appeared and he comes to an end of the witnesses he has got, then you would like to be able to adjourn the case for hearing that witness only without opening up the whole case and without allowing him to bring any more witnesses. Is that what you would like to do?

A. I would not compel the defendant to begin his case until the plaintiff has closed his case, unless of course the defendant is willing to do so before the plaintiff finishes his case.

Q. You would like to get the power on the part of the court to say that one witness for the plaintiff might be heard at a later stage and that the defendant should begin but that if the plaintiff's other witness is heard the defendant would have the right to call in any further evidence occasioned by that?

A. If the defendant has no objection, I would surely do that. But if he has objection, I would not like to do that, because there is this fear that the plaintiff by keeping back that witness might try to rebut the evidence which the defendant has adduced.

Q. One appreciates that. I mean, ought not the Court to have power in cases like that to give the plaintiff a chance, where he thinks that the plaintiff is not deliberately keeping the witness back? Otherwise you have got to make up your mind to grant the adjournment and there must be unnecessary waste of time if you are obliged to grant the plaintiff an adjournment and the defendant refused to go on. That is done in the ordinary way in England. Don't you think it is a matter of discretion?

A. I have told you my only fear is that if the witness is kept back in this way, probably the plaintiff would try to rebut the evidence given by the defendant and the defendant in all such cases would not like the idea of beginning his case unless the plaintiff has closed his case.

Q. Of course at present they think they have that right and they exercise it because they are very suspicious of each other. But, if you have any reason to suppose that that is the object of the plaintiff of course then you would oblige him to finish before the defendant begins. But in any other case it would not be necessary. What do you think?

A. Yes. I think so.

Q. Have you any other point as regards witnesses that ought to be considered?

A. I should make it obligatory on a party to produce all his witnesses in time. Of course he is entitled to the assistance of the court. But he cannot expect the court to indefinitely prolong the trial simply for a witness or two. I have often had cases before me in which all witnesses have been deliberately kept back. What the party would do is that he would produce new witnesses and compel me to examine new witnesses and I could not refuse to examine those witnesses.

Q. In such cases you would like to be able to refuse to examine new witnesses?

A. Yes. I should like to have a discretion. I would like to refuse to summon or examine new witnesses. That is the power which I should like to have.

Q. Then that means that he would have to table a list of his witnesses at the commencement of the hearing. A list of witnesses, I understand, is filed soon after the issues.

A. After the framing of issues we give 8 or 15 days' time to the parties within which they should file the list of witnesses and documents and then we consult the pleaders on both sides as to what time the trial of the case is likely to take and then we give the hearing.

Q. Does this list of witnesses include those for whom a summons is not required? I mean—is a man bound by his list of witnesses?

A. Yes. He will be bound. He must give the names of all the witnesses whom he proposes to examine except of course himself.

Q. Then you say that in this province there are too frequent transfers of judicial officers. I gather that in the last 4 years the Judge of the Small Cause Court has been 12 different people, the Subordinate Judge first class, eight, and the Subordinate Judge second class, nine.

A. Often it so happens that nobody works at that place for about a week or 10 days. So all the cases during that period have to be adjourned.

Q. Now, you make some remarks about the trial of rent suits by Tahsildars and Naib Tahsildars. I understand that you say that that is not satisfactory.

A. I say that that is not at all satisfactory. It is most unsatisfactory in fact. They don't know anything of law or procedure and they make most silly mistakes. I can give you many instances. Suppose the defendant is not present and a relation is present. The relation will be examined and on the statement of the relation a decree would be given in favour of the plaintiff. It is not necessary that he should be the duly authorized agent of the defendant. There is another instance. Suppose there is a suit for recovery of arrears of rent for three years and only jamabandi for one year is produced. The Tahsildar will dismiss the whole claim on the ground that jamabandi has not been produced for two years.

Q. You are against issuing the form of notice referred to in section 106 of the Transfer of Property Act. Do you think that it would not work well?

A. Yes.

Q. Do you think that adult female members might be included among the persons through whom service might be made?

A. Yes.

Q. Now, as regards discovery and admission of documents and so on, you say that the necessity of resorting to the provisions of Orders 11 and 12 of the Code is not felt because discovery and admission of documents form part of the statements of the parties recorded by the Judge. Do you mean to say that at the time of settling the issues, the Judge has got the written statement before him and makes enquiries as to what documents the parties have and tries to narrow the issues by getting admissions from the parties?

A. Before framing issues he calls upon the parties to produce all the necessary documentary evidence and calls upon the other party to admit or deny and if necessary he questions the parties with regard to those documents. When a case is instituted we generally give a date within 4 to 6 weeks for the hearing of the case and there is scarcely enough time left to comply with the provisions of Orders 11 and 12 of the Civil Procedure Code.

Q. Does the judge really examine the parties before the framing of issues? Do you think this practice is universal throughout the province?

A. Yes.

Q. I see you say that the representation by manager of a joint family should be considered as sufficient for purposes of binding all the members of the family and that it should be open to any member of the family to apply to be made a party to the suit on the ground that the father or the manager does not properly represent him?

A. Yes.

Q. Now as regards taking of evidence on commission, do you find a great deal of unnecessary cross-examination before commissioners?

A. That has not been my experience here.

Q. Do you think that as a rule written interrogatories should be employed?

A. Yes, I have stated that in my written statement.

Q. I understand you think that a case when once begun can be tried from day to day and there is no impossibility about that?

A. There is no impossibility about that and orders of the Judicial Commissioner are very clear on that point.

Q. Are inspections by district judges made effectively? Do you think they get time to do this work properly?

A. I would not say anything about time, but I think that inspections by district judges are made effectively. I may point out, sir, that district judges have to note all these facts in their inspection notes and they have also to note down in their confidential reports whether cases are tried from day to day. The orders are to the effect that evidence cases must be taken at the beginning of the day and all the witnesses present should be examined on that date.

Q. Then I see you suggest that the date for the sale should be calculated not from the date on which the proclamation is put upon the court house, but upon which it is put upon the property?

A. Yes. I would leave it to the discretion of the court and it may be, say, more than six days and less than 30 days. In any case it should not be more than 30 days and less than 6 days. I would leave it to the discretion of the court.

Q. Then I see you are in favour of curtailing the 12 years limit for execution to 6 years?

A. Yes.

Q. And abolishing steps in aid under Article 182?

A. Yes.

Q. But you are not in favour of refusing to accept payment unless it is made by cheque? You would leave the law as it is at present. You think that it will cause great inconvenience and hardship to illiterate and ignorant parties.

A. Yes.

Q. And as I understand you think that if the judgment debtor gets a proper notice at the beginning of the execution he need get no more notice?

A. Yes.

Q. And you do not think it necessary to serve him with a copy of the proclamation?

A. No.

Q. Then you think that in some cases it is not necessary in mortgage suits to have two decrees?

A. No, it is not necessary, but in foreclosure cases there ought to be.

Q. Yes I quite agree with you that in foreclosure cases there should be two decrees.

A. Yes.

Q. And you say that too many orders of stay are made by appellate courts hanging up execution and you think it should be provided that the respondent should be awarded interest not exceeding 12 per cent. in case the appeal comes to nothing.

A. Yes, in the case of money decrees and reasonable compensation in the case of other decrees.

Q. I see you say that the power of co-ordinate or inferior courts in the matter of granting injunctions to stay execution should be curtailed?

A. Yes, because the object of such suits is merely to delay execution of decrees.

Q. Then you say that in this province debtors applying in insolvency are mostly poor agriculturists whose only property consists of occupancy land which is not liable to attachment and sale. I take it that the law of insolvency is not of much use in this province?

A. Except crops, because crops are liable to attachment.

Q. Do you think that people get rid of their crops before they present their petitions?

A. They sell their crops and then apply.

Q. Then you have made some suggestions for altering the Law of Evidence. You say that in the case of registered documents admissible in evidence under Section 90 of the Evidence Act, the period of 30 years may well be reduced to 20 years?

A. Yes.

Q. Then you say that certified copies of registered documents should also be admitted in evidence without formal proof when the original would be admissible under Section 90 of the Evidence Act?

A. The above suggestion is subject to the condition that the loss of the original has been accounted for or made out.

Q. Then you say that certified copies of plaints, written statements, applications, etc., filed in a suit or proceeding ought to be admitted in evidence without further proof?

A. Yes.

Q. Next you say—this is very important—that the documents required by law to be attested may be proved like any other document. Under what section of the Evidence Act?

A. Sections 68 and 69.

Q. What you really would do is this—that in any case of an attested document you would apply Section 69 of the Evidence Act to prove that the attestation was in the handwriting and that the signature of the person executing was in his handwriting. Would that do?

A. Yes.

Dr. Gour.—*Q.* Do you think that the plan would be to amend section 59 of the Transfer of Property Act to give a larger definition to the word "Attestation"?

A. Yes.

Q. If you do this then would you be in need of amending section 69?

A. Then I would make obligatory on the parties to examine the attesting witness.

Chairman.—*Q.* Then you say that the official records and records of local bodies like Municipal Committees, District Councils and local Boards should be treated as public documents?

A. Yes I would like to have this matter cleared up.

Q. Then you say that it is not necessary to retain the provision that the plaintiff suing upon a mortgage must call an attesting witness to prove it. Under what section?

A. Section 69.

Q. You also suggest a modification in the definition of the expression "Attestation" so that it may include attestation by a person to whom the executant has admitted execution. Do you want to get rid of the Privy Council ruling?

A. Yes.

Q. But you are not prepared to accept the idea that a registered mortgage should be presumed to be valid?

A. Yes.

Q. Would you suggest that deeds and documents by which immovable property is transferred should be required by law to be attested in the above sense?

A. Yes.

Q. Then what documents of transfer are not required to be attested?

A. Sale deeds.

Q. Don't you require attesting witnesses to sale deeds at all?

A. Yes.

Q. You say that the registration of all documents purporting to transfer property worth Rs. 100 or more and also documents in which consideration is Rs. 100 or more should be made compulsory when the executant is a person who cannot sign his name?

A. Yes.

Q. By that you would include all movable property?

A. Yes. A receipt for Rs. 100 should not be admissible in evidence unless it is registered.

Q. But having regard to the fact that the Registrar is not sometimes readily available, don't you think that that might be a little inconvenient?

A. I suggest this to put down forgery. A receipt must be registered when the man is illiterate.

Q. That would raise the question whether the man could sign his name or not? That will be a hardship.

A. Yes, it is possible.

Q. You say that a party to a document should be absolutely stopped from saying that it is fictitious or unreal document and you think that you will put down benami transactions in this way and assist execution?

A. Yes, I think so.

Q. Do you think that to ignore benami transactions might open the door to fraud, but you are prepared, I think, to go a long way to put down this evil of benami and the people who enter into such transactions would do so with their eyes open? That is your idea.

A. Yes. My idea in objecting to these transactions is more or less to avoid fraud.

Q. One thing on which I am not quite satisfied is whether there are legitimate benami transactions. Do you think there are?

A. Yes. A husband buys some property in the name of his wife or son and the reason why he does so is to keep off his creditors from attaching that property.

Q. Do you think that there are some benami transactions which are entered into fraudulently?

A. Yes. There is no object in entering into such transactions but to defraud somebody.

Dr. Gour.—Q. There are cases where a father, who does not want to go to the court, executes all the documents in the name of his son, who is a minor and unable to go to the court. The intention of the father is merely to save himself from the trouble of going to the court.

A. He can save himself the trouble by executing a Power of Attorney in favour of his son. I should like to put down the transaction. There may be injustice in few cases but they will be very few.

Chairman.—Q. Of course every body will know that, if he entered into any benami transaction, he would be putting himself into the hands of the other party and he will have to thank himself if he is defrauded by the other party.

A. Yes.

Dr. DeSouza.—Q. Are purchases made in the name of a lucky member of the family in this province? In some provinces purchases are made in the name of a member because he is considered to be a man of luck.

A. I would not include such cases in the category of benami because in such cases the purchase of the property is for the whole of the family. You can say that the man, in whose name the transaction has been conducted, is not the real owner of the property.

Dr. Gour.—Q. But the name of the man is there?

A. After all he is the vendee.

Q. Ostensible vendee—the sale vendee, and not the real vendee, as, for instance, property purchased in the name of "God Mahadeo" or "God Ganpati."

A. In these cases the party will be quite safe, the god would not come forward.

Chairman.—Q. Is there any reason why this idea of a lucky name should have any respect shown to it? Could not one say that if a man has a foolish reason, and for that reason he puts his property in the name of somebody else, he must still take the consequences?

A. I would say that I would not give it retrospective effect.

Q. You can give some time—two or three years at least—and have it laid down and then carry on rigorously ignoring all the equities between two people, who get themselves into this trouble. The more one defrauds the other the better one would like it?

A. Yes.

Q. Of course there would be difficulty in distinguishing the benami transaction from the transaction where a family is represented by an individual?

A. Yes.

Q. You will have to draw that line very carefully and there may be other cases where there is, for example, an agent who may legitimately be doing something, in his own name, on behalf of his principal. So there will be some difficulty in defining the benami transaction and some particular classes near the border line will have to be separated. But as regards the real benami—A's property is put in the name of 'B'. As regards that you will bind them absolutely to the terms of their document?

A. Yes.

Written statement of Mr. D. G. MITCHELL, C.I.E., I.C.S., Lega Remembrancer to Government, Central Provinces, dated the 7th July 1924. (Not examined.)

I regret that pressure of work has prevented me from answering as many of these questions as I would like to have answered. I have dealt below only those questions relating to matters which stand out prominently in my memory.

2. I must record my opinion that the most serious cause of delay lies not with the legal practitioners or with the courts, but with litigants themselves; and this cannot be eradicated by amendments to rules of procedure or by instructions to judges. It is most regrettable, but it is an undoubted fact that in this province legal practitioners frequently do not receive any instructions at all until the morning of the first hearing; and even then their instructions are imperfect. When a court proceeds to examine the parties, it is met with the plea that the pleaders have no instructions on the points raised, and adjournments are asked and usually have to be given. Again pleaders are not furnished with complete papers in the case until the very morning the documentary evidence has to be filed. The client thrusts a great bundle of papers at the pleader who has no time to sift them. He places them on the court table and, I am afraid, the court frequently places them on record without going through them and rejecting those which are irrelevant. The result is that in a contested case, it frequently happens that not more than 3 or 4 out of a bundle of 30 or 40 documents are even referred to in a judgment. Another undesirable feature in this province is that of refusal of parties to submit their witnesses to the process of what is known as " precognition " in Scotland. There is undoubtedly an idea abroad that if a pleader examines a witness before the case comes up for hearing, he is open to charge of tutoring that witness, and the result is that none but a legal practitioner of the very highest standing will ever attempt to sift out, economise and arrange his oral evidence. These matters all go to the root of the question and there seems to be no cure for them but a steady education of the litigant public to a realisation of the need for business methods and to an appreciation of the fact that a pleader may examine a witness without unnecessarily tutoring him to give false evidence. I must also refer to the evil practice whereby dishonest defendants cite large numbers of witnesses and then keep them out of the way of service of summons. The intention is to delay the trial and annoy the other side. No rule can be devised to overcome this evil. It is a question of morality.

Question No. 7.—I do not think it is desirable even to attempt to prescribe a standard of efficiency for an officer as regards the amount of work done. The nature of the work in different courts varies and it is impossible to set up a standard which would apply to them all, or even to a large proportion of them. Any standard must necessarily be of a statistical nature and in my experience, the prescription of statistical standards defeats its own object. The incompetent officer leaves the hard cases alone and concentrates his energies on easy cases, so that his court disposals at the end of each month will show a high statistical average. On the other hand the competent officer is inclined to slacken in his efforts when he has reached the required statistical standard for the month. The only method to secure a reasonable outturn of work is that of regular inspection and supervision.

Question No. 8.—There is no doubt that the time of courts is frequently wasted by their inability to obtain the attendance of pleaders, and I doubt if this evil can be satisfactorily overcome. The public will naturally engage the successful pleader only, and the usual complaint of a local bar is that a few leading members have more work than they can undertake, while the rest have a very little work at all. The result is that frequently the successful pleader's presence is required at the same time in two or more different courts. Personally, I have found that much can be done by a co-operation between the Bench and the Bar. An agreement can be come to whereby the different classes of courts may have the first call on the members of the bar at different periods of the day; for instance, the district courts may have their call at 11 o'clock and the courts of sub-judges at 2; and the courts attempt to arrange their work accordingly. This is only a palliative, but it does help.

Question No. 28.—The post office might be employed to a greater extent in the service of processes, but its employment cannot be extended very far, for as soon as that point is reached when it is just likely that a postal peon is bringing a summons as that he is bringing an ordinary letter, then any person expecting a summons will make himself scarce and the postal peon will be no more effective than the court Mazkuri.

I most strongly deprecate the proposal that the village officials should be used for this work. These officials are one of the last relics of the old Indian village community and their work now-a-days is connected with revenue matters and with the local self-government of the village. They are an integral part of the village social life and are necessary to its amenities. It wiil be most unwise to foist upon them duties chiefly in connection with collection of debts. This would tend to make them the enemies of every man against whom a decree exists, and the potential enemies of every man who owes money to a *bania.* As these persons form a very large proportion of the peasantry in every village, it follows that the village official would be looked at askance by such a large proportion of the village society that their functions as revenue and local self-government officials would be seriously prejudiced. The evil thereby done to village life would greatly transcend any possible benefit that might accrue to the small body of decree-holders—a body for whose benefit the State has done quite enough. I would enter a most emphatic protest against an attempt to organise village social life on a debt-collecting basis.

Question No. 31.—I regard the correct framing of issues as the most important stage of the trial. It can only be achieved by a regular course of instruction, inspection and comment. At present the issues framed by many judges are a mere hap-hazard collection of points asserted by one side and denied by the other, without coherence or logical arrangement of any kind. The ideal set of issues should be a logical body of questions which will ultimately form the heads of the judgment, in the order set forth; and it should be so drafted that the earlier issues govern the latter issues as far as possible. I think that greater insistence should be laid on the degree of care that has to be exercised in regard to these issues. I even would like to go to the length of issuing instructions to the courts that, in a case which is at all complicated, the issues should not be framed in court on the spur of the moment, but should be dealt with by the judge in camera, with the same care, or even greater care, as he expends in writing the judgment. There is no doubt that a few minutes spent at this stage frequently save hours during the trial and during the writing of the judgment.

Question No. 32.—I have already referred to this in the prefatory paragraphs above. I admit that the judges are frequently at fault in accepting large masses of documents without examining and sending them. The correct procedure ought to be insisted upon, and that no document should be accepted unless it is examined by the judge and the admissions or denials of the other side recorded. But, as I remarked above, the abuse lies chiefly with the parties themselves who fail to give the counsel time to sift the documents. In this the bar can assist greatly by making the processes as uncomfortable as possible to clients. The procedure laid down in the Code is excellent; it is the practice that is wrong.

Question No. 33.—The suggestion contained in the last sentence of this question seems to be sound and I would support it if the procedure can be so framed as to avoid giving an excuse for unnecessary adjournments.

Question No. 35.—A great deal of unnecessary and avoidable oral evidence is admitted in the courts of this province. The courts have the remedy in their own hands but they seldom apply it. The remedy is to be more particular in framing the schedules of costs. All expenses connected with an unnecessary witness should be borne by the party summoning that witness. But I am afraid that, at present, the costs of the parties are usually lumped together and not differentiated in this manner.

Question No. 41.—A great deal of delay is frequently caused by difficulties in appointing a guardian *ad litem*. The practice in this province is to make two or three fruitless efforts to find a suitable relative and then to appoint an official of the court. I think the suggestion contained in this question should be supported, but I would deprecate the issue of notices to more than three possible guardians at a time. If the court cannot get one out of these 3 to be a suitable guardian, then it will be justified in appointing one of its own officials.

Question No. 43.—Judgments are frequently too long, but the causes of this are so numerous that it is difficult to suggest remedies. One cannot provide for the constitutionally long-winded nor for the man who regards every tiny point as of supreme importance. These are defects of mental constitution that cannot be cured. The best remedy of general application is an insistence on the correct framing of the issues. Still more might be done by cautious instructions that judges should depend more upon their own powers of interpretation of the statutes and less upon the interpretations given in public rulings. I have frequently seen long discussions of numerous rulings ending up in a decision which in itself is perfectly obvious from the wording of the statute.

Question No. 45.—The instructions by the High Court of this province are most peremptory in this matter and I think that most judges now do arrange their own programmes. The trouble is that they do not always arrange them to the best advantage. Some judges have some rough and ready rule of thumb whereby they fix so many execution applications for one day, so many cases for issues for one day, and so many cases for evidence for one day. This is all very well as far as it goes, and was an undoubted advance on the practice of 20 years ago, whereby a miscellaneous batch of work was fixed for each day in a quite hap-hazard manner. But the judges might still do more by endeavouring to elicit the amount of work that will probably be involved in a particular case and by obtaining the advice and co-operation of the bar in this important matter. Here again the trouble is that even the members of the bar themselves have no idea of the number of witnesses their clients are going to summon.

Question No. 46.—See above. If the bench were to exercise a steady pressure on the bar and the bar to exercise a steady pressure on the litigants, then it ought to be possible in time for the court to be able to ascertain the probable amount of work involved in any particular case. When this is ascertained, the court should boldly allow time without regard to the statistical returns at the end of the month. This again may be secured by a steady pressure from above and the judges should be taught to appreciate the fact that statistical returns are not a conclusive guide to the amount of work done. At present, I am afraid, many judges have not the courage to allow a whole week to an important and heavy case as that will mean that at the outset they will dispose of only one case in that week, and their return at the end of the month will show a drop of approximately 25 per cent. on the average figures. Nevertheless, it should be possible to get all judges to appreciate that delay in tackling heavy cases must in the end react most unfavourably on their outturn of work.

Question No. 47.—In my experience, it is not the length of an examination which leads to delay in the return of the commission, but the dilatoriness of the commissioners. I do not see any cure for this except the drastic and "unprofessional" one of not paying the fees of the commissioners until the commission is returned.

Question No. 48.—I doubt if the filing of an affidavit in support of adjournments would have any real effect in speeding up work. Affidavits are facile things in this province. The amount of day costs which is allowed in this province is either Rs. 5 or Rs. 10. I think this could be increased with advantage, but even this would be of little avail if the present convention of many bars is maintained whereby these costs are earmarked as subscriptions to the bar library.

Question No. 49.—See 45 and 46. The correct procedure can only be enforced by regular inspection.

Question No. 56.—In my opinion, the rule should be that a decree may be executed at any time within 6 years from the date on which it was passed.

Question No. 65.—My remarks on Question No. 28 apply here with still greater force. I would again protest strongly against the diversion of these village officials from their important legitimate duties to the prejudice of their efficiency.

Question No. 66.—I doubt if the proposals in (*a*), (*b*), (*c*) and (*d*) would appreciably expedite a trial or a mortgage suit, though they might avoid future litigation. As regards (*e*), the almost invariable practice in courts in this province is to grant 6 months for the redemption of a preliminary decree. To my mind this time is too long. The terms of the mortgages have already been broken and there is no reason to prolong the agony. If the defendant has already had ample notice and if he cannot raise sufficient money to redeem the decree in two months, it is most unlikely that he will ever raise it.

Personally I can see no point whatever in framing a separate final decree in a simple mortgage suit.

Question No. 69.—It is a regrettable fact that the provisions of the Insolvency Law are being more and more used in this province. They undoubtedly stand in the way of a decree-holder getting the fruits of the decree speedily or even of getting them at all—though I do not regard that as a very serious evil. But a much more serious matter is that the Insolvency Law is entirely inapplicable to the conditions of a province wherein the vast majority of the defendants are cultivators whose holdings are not transferable. The tenant undoubtedly borrows money on the implied security of a succession of crops; but when he gets into financial difficulties he flies to the insolvency court and his creditor is left with nothing from which his debt can be realised. The habit is a most demoralising one and the amount of dishonesty and chicanery that goes on in an insolvency court is almost incredible.

Question No. 70.—Execution proceedings are occasionally but not frequently delayed in this province by absconding judgment-debtors. The provision for arrest or attachment before judgment does not operate effectively to prevent such delays as the person who absconds is usually a man who has no property to attach either before or after the decree. I do not think that any remedy is possible or is needed. If a man is forced to the extremity of absconding he may very well be left alone.

Question No. 72.—I think the proposal in the second part of this question is unsound. It offends against the principles of sections 101, 102 and 103 of the Evidence Act and it also seems to offend against any fairness. It is a simple matter for a mortgagee to prove the execution of his mortgage, but it is a very difficult matter for the mortgagor to prove non-execution.

Question No. 73.—I think a great deal might be done by allowing the admission of secondary evidence by consent of the parties.

Question No. 82.—We have recently enhanced the court fees in this province very considerably and I think that for the present the limit has been reached. In any case I do not believe that a higher rate of court fees will prevent the institution of a suit of a gambling nature, though it may stop merely petty frivolous suits. A true litigating gambler does not mind if the stakes are made a little higher by the court fees. The danger is that High Court fees will oust a poor man with a genuine claim.

Question No. 85.—I have seen cases which an ordinary civil court was incompetent to try. Such cases related to complicated facts of a technical character, such as large contracts in the Public Works Department. The policy of the Local Government is to have these cases referred to arbitration wherever possible and to endeavour to secure that the arbitrators are men with technical knowledge of the subject. I think this idea might be expanded and that in a case of such a nature the decision of a technical expert on the spot is to be more accurate and more expeditious than the decision of the civil court. The court should have power to make a reference.

Question No. 86.—There is a large and influential body of opinion that the multiplication of law reports in India is a serious obstacle to speedy judicial administration. The practice takes its rise from the English precedent whereunder most of the law is not codified and has necessarily to be sought for in the judgments of the various courts from Norman times downwards. The analogy does not strictly apply to India where the law, with a few exceptions, is all codified. The Indian statute law professes to be complete in itself; and in fact, for the most part, it is extremely well drafted. Logically, therefore, the vast majority of points of law should be decided from the statute, and references to authoritative interpretations by the courts should only be required in cases in which the statute law is ambiguous. We should expect, therefore, that the number of published rulings in India should be comparatively small.

On the contrary, however, we find that there are half a dozen or more series of authorised law reports, every number of which is carefully preserved. At first glance a thoroughly exploded ruling has the same value as the latest authoritative decision of the Privy Council; and I fear it must be admitted that these exploded rulings are frequently cited by practitioners who know that they are of value. In addition to the auhorised law reports, there are numberless unauthorised reports, edited by legal practitioners of varying ability. Some of these reports are carefully edited and are on the whole useful. Others again are carelessly edited and their unguarded use is apt to lead a court into an error. They will publish a judgment which has been written by a judge as a piece of ordinary routine work, without the slightest intention that any decision contained therein should be used for any other purpose than for the decision of that case. These are published with headings which sometimes contain a generalisation which cannot be justified from the body of the judgment.

In practice, the Indian Law Reports Act, 1875, is ignored and all these published judgments, authorised and unauthorised, confirmed and overruled, are freely cited on any law point that may arise. I consider that the result is prejudicial to the intellectual development of the judiciary. Young judges acquire the habit of looking for other peoples' interpretations of statutes instead of boldly applying their own knowledge of first principles to the elucidation of their own interpretations. In extreme cases a young judge will sometimes discuss 20 or 30 rulings in a judgment and then make a decision which he could have made by a half-minute perusal of the statutory law concerned. Once a man has formed the habit he tends to lose the faculty of interpreting a statute on his own initiative, or of trusting to his own interpretation.

It may fairly be argued that if judges early develop their own powers of initiation and interpretation they would become more and more certain in their decisions as they gain experience and even to begin with I think on the whole their decisions would be more accurate, for to interpret a statute which explains general principles clearly is a simpler matter than to hunt for a principle in a mass of conflicting and overlapping judgments delivered in cases which are not always exact parallels with the case in hand. The statute law is a steady beacon; the judicial ruling is sometimes a will-ó-the-wisp.

To my mind the remedies are as follows:—

(*a*) The procedure whereby a judgment comes to be published in an authorised series should be overhauled and regularised for all the High Courts in India. The selection should be carefully done by a mixed committee of judges and legal practitioners; and the first selection of cases for discussion should be made in a quite impartial manner. There is some reason to suspect that in some provinces the selection of cases for publication depends to some extent upon the vanity of the judges.

(*b*) Only authorised law reports should be allowed to be cited in courts, or quoted in a judgment. I do not wish to prevent publication of these unauthorised law reports, which are most useful both to judges and to legal practitioners who are perfecting their studies in the law, and desire to keep in touch with current developments. My object is only to secure that no judgment can be cited in a court as authoritative unless that judgment has been so selected as to be worthy of the distinction of being regarded as authoritative.

(*c*) A periodical commission should be appointed to overhaul the authorised law reports and to eliminate all judgments which are out of date, have been overruled, or no longer have any cogency. I would suggest a 10-year period. The committee should be an all-India body and should have power to reconcile conflicting rulings by the elimination of those rulings which do not recommend themselves.

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